

STATUTE LAW





A TREATISE  
ON  
STATUTE LAW

With Appendices

CONTAINING

WORDS AND EXPRESSIONS USED IN STATUTES WHICH HAVE BEEN  
JUDICIALLY OR STATUTABLY CONSTRUED,  
THE POPULAR AND SHORT TITLES OF CERTAIN STATUTES,  
AND THE INTERPRETATION ACT, 1889.

BY

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BARRISTER-AT-LAW.

FOUNDED ON AND BEING THE FOURTH EDITION

OF

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## PREFACE TO THE FOURTH EDITION.

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THE original text of MR. HARDCASTLE has been so much altered, and so much has been added, in the successive editions prepared by the present Editor, that the present edition is more accurately described as being founded on HARDCASTLE. So much of the valuable material of the original edition as has been preserved in the present text is included in square brackets.

Two new chapters have been added in Book II., dealing more fully with subordinate legislation (c. 3, p. 256) and colonial legislation (c. 9, p. 399). Reference has been more freely made to colonial decisions, which are yearly growing in importance, particularly in Australia, Canada, and India. At the end of Appendix C. (p. 625) is given a list, made as complete as has been found possible, of Colonial Interpretation Acts. The Appendix of words (B) has been increased by adding recent decisions.

It is hoped that the labours of the Author and Editor will supply some clues to the intricacies of the statute book and a sufficient collection of judicial guides to its interpretation.

But it is difficult, if not impossible, to indicate beforehand any cut and dried method of determining the exact meaning of any statute. So many conflicting energies go to the making of a statute that it is not surprising to find incompleteness of expression, inconsistencies of wording, and even uncertainty of meaning and intention. The most that can be done is to indicate the

canons of construction, *i.e.*, the presumptions which incline the balance in favour of a reasoned and methodical interpretation, unless some special wording or indication of intention rebuts and counterbalances their weight.

Parliament is said to be omnipotent, and that it is capable of dealing with curious matters will be seen from the subjoined specimen of an eighteenth century preamble:—"And whereas it has been customary for the Rector of the Parish of Eckington aforesaid for the time being, to keep and maintain a Boar for the Use and Benefit of the said Parish And whereas an Organ hath lately been erected in the Parish Church of Eckington aforesaid, and no Annual Salary being provided for the Organist thereof, and the said Parishioners being desirous to abolish and set aside the aforesaid Custom, and to appropriate an Annual Money Payment to the Organist for the time being *in lieu thereof*" (35 Geo. 3, c. 100, private). The marginal note is: "Rector exempted from keeping a Boar, on payment of an Annual Sum to the Organist."

W. F. CRAIES.

3, TEMPLE GARDENS.

12th December, 1906.

## PREFACE TO THE THIRD EDITION.



THE changes effected in this Edition consist in the main in the addition of authoritative decisions given since 1892 as to the canons of interpretation, and in the excision of older decisions of less authority or value. The Appendix of words judicially interpreted has been revised and increased, and the Appendix of short titles has been enlarged by the addition of the bulk of those created by the Short Titles Act, 1896, and of the popular titles of numerous Acts. The Interpretation Act, 1889, has for convenience of reference been inserted in Appendix C.

W. F. C.

*December, 1900.*



## PREFACE TO THE SECOND EDITION.



IN preparing this Edition the Editor has had the great advantage of the Author's Notes up to the year 1885. The method and arrangement of the first Edition have in the main been followed, but very considerable additions and alterations have been made, in order to bring this Edition up to date, and to include the substance of the many important decisions given since 1879 with reference to statutes, so that this Work might be made as far as possible a complete book of reference on the subject of statute law.

The Interpretation Act, 1889, has done much to simplify the language and facilitate the interpretation of statutes; but its practical and far-reaching effect is not yet fully realised. An endeavour has been made in this Edition to show how far the Act alters or adopts pre-existing rules of construction, and also to deal with the effect of Consolidation and Revision Acts. The Author's Appendix of Words judicially and statutably construed has been much enlarged; but neither time nor space permitted the Editor to make the Appendix a complete dictionary of statutory terms. The second Appendix, of popular and short titles, is new, and intended to meet a need which the Editor has often himself experienced, but which will now be satisfied to a great extent by the Short Titles Act, 1892.

For the Table of Contents in the first Edition has been substituted a table of contents at the head of each chapter; and the Index has been reduced in bulk and simplified. The date of each case is inserted, to facilitate reference to sets of Reports not specified in the text or Table of Cases.

W. F. C.

*July, 1892.*





## PREFACE TO THE FIRST EDITION.



THE present treatise was jointly projected by my friend Mr. EDWARD JENKINS, M.P., and myself, about nine years since. Shortly after that time my friend relinquished his practice at the Bar for other pursuits, literary and political, and thenceforward the task of collecting and comparing authorities devolved upon me. I am, therefore, solely answerable both for the form and matter of this compilation.

HENRY HARDCASTLE.

PAPER BUILDINGS, TEMPLE,  
*August*, 1879.



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## ADDENDA ET CORRIGENDA.



- Page 120, line 6, *after* "*R. v. West Riding Council*," *add* "now reported, (1906) 2 K. B. 676."
- „ 147, line 19, *for* "statutory rule of construction," *read* "rule of statutory construction."
- „ 177, line 13, *after* "*Chance v. Adams*," *for* "*Hardr. 325*" *read* "(1696), 1 Ld. Raym. 77, 78."
- „ 242, in note (*h*), *for* "sect. 31" *read* "sect. 32."
- „ 271, line 3 from bottom, *for* "It" *read* "This power."
- „ 276, in note (*k*), *after* "*Hanks v. Bridgman*," *for* (1898) *read* (1896).
- „ 376, note (*c*), } *for* "*Emmanuel v. Mortensen*," *read* "*Mortensen v.*  
 „ 382, note (*f*), } *Peters*, now reported 43 Sc. L. R. 872."
- „ 413, note (*b*), *add* "In *Outtrim's case*, *Webb v. Outtrim*, on 6th December, 1906, the Judicial Committee overruled the opinion of the High Court of Australia that legislation of the State of Victoria imposing income tax on the salaries of Commonwealth officials was invalid, and did not accept the opinion expressed in *D'Emden v. Pedder* (1904), 1 Australia C. L. R. 91, as to the relevance of certain United States decisions as guides to the interpretation of the Commonwealth Constitution."
- „ 418, in note (*f*), *for* "p. 63" *read* "p. 43."
- „ 433, to note (*a*), *add* "*Denaby & Cadeby Main Collieries, Ltd. v. Yorkshire Miners' Association*, (1906) App. Cas. 384, 400."
- „ 472, note (*u*), *after* "*Jonas v. St. Dunstan's-in-the-West Churchwardens, &c.*," *add* "now reported 23 T. L. R. 13."

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# PRELIMINARY.

## CHAPTER I.

### INTRODUCTORY.

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1. [THE object of this treatise is, in the first place, to set forth in a methodical way the rules now in force (*a*) for the interpretation of British] and Colonial [statutes, and also to explain their effect and operation. The word “methodical” is used advisedly, because the two most common characteristics of treatises on legal subjects are (as has been frequently pointed out by critics) an absence of method, and perfunctory citation of an undigested mass of references, with insufficient regard to the principles enunciated in the cases cited (*b*). This treatise professes to be, not a digest of all the cases in the books in which *dicta* are to be

Objects of work.

(*a*) Rules for the construction of statutes formerly adopted, but now rejected or forgotten, are not fully dealt with. Such rules are alluded to up and down the reports; for instance, in *Miller v. Salomons* (1852), 7 Ex. 475, at p. 559, Pollock, C.B., says as to a comment by Lord Coke upon 13 Edw. 1, st. 4 (*Circumspectè agatis*), “I do not believe such a construction of a statute would be tolerated in modern times.” See also *Entick v. Carrington* (1765), 19 St. Tr. 1060; Wilberforce, Construction of Statutes, 217.

(*b*) With “an abundance of that index lore which turns no student pale”: *London Financial Association v. Kelk* (1884), 26 Ch. D. 107, Bacon, V.-C.

found on the subject cited, but a selection from the leading cases on the points discussed, or from cases which contain judicial *dicta* of the greatest weight and pertinence. As a general rule (*c*) a case is not cited without either quoting a *dictum* for it, or stating shortly the point decided: for it has been deemed better, in deference to judicial opinion, to seek authority at its source in actual decisions, since, as was said by Lord Hatherley in *Garnett v. Bradley* (1878), 3 App. Cas. 944, 950: "Instead of taking the law as stated by a text-writer as to repeal by implication," a judge prefers "taking the law as it is laid down in a well-known case, which gave rise to a considerable amount of discussion."]

This treatise not theoretical, but mere index of rules.

2. ["There are two very clear divisions into which law-books may be divided—namely, into those which treat of the theory of a certain subject, and those which contain the actual positive rules in force," deduced from statutes and case law. The present treatise professes to come under the second category, being designed for the use of those readers, be they students or practitioners, who wish to know the rules by which statutes are interpreted, and the effect which statutes produce upon persons and things in general. "The proper mode of writing a law-book," it has been said, "is undoubtedly to place the subject-matter in a series of distinct propositions; then, if each of these propositions be clearly understood, they can be applied to various different sets of facts, and form a well-defined basis for legal arguments" (*d*). This is what has been aimed at in the following pages, and this work claims to be nothing more than an index, by means of which persons may be enabled readily to find the information or *dictum* required.]

Text-books on the subject.

(1) English.

3. [Although it is a matter of every-day importance that the rules which regulate the interpretation of statutes should be as widely known as possible, it is not always easy to ascertain what those rules are. It seems strange, considering the multiplicity of law-books, that until recent years, little has been written on this particular subject. Comyns, Viner, and Matthew Bacon, in their well-known digests and abridgments of the laws of England, have collected together (Com. Dig. tit. Parliament, R., and Bacon's Abr. tit. Statute) the principal rules on the subject which are to be found in Coke's Institutes, and in the older reports, more especially Plowden. But neither these collections of rules nor the treatise most generally recognised as the best authority on the subject, Dwarries on Statutes (*e*), can be said to have dealt completely with the subject, and this last-

(*c*) [This rule is not observed in the chapter on the Commencement and Duration of the Effect of Statutes, Part II. chap. vi. The decisions on this branch of the subject turn so much upon the wording of the particular statute under consideration, that it appeared desirable to append a list of cases, which might possibly be in point when the question arises upon some future occasion.]

(*d*) Spectator, Sept. 23, 1876, p. 1191.

(*e*) 2nd edit. published in 1848.

mentioned treatise has not been re-edited for more than fifty years.]

Since the first edition of this work was begun, two English law-books of high merit on the Interpretation of Statutes have been published by Sir P. B. Maxwell (*f*), and Master Wilberforce, and also the valuable Judicial Dictionary of Mr. Stroud (*g*), which is not primarily concerned with statutes, but is a valuable epitome of judicial interpretations of statutory terms. Besides these special works the indices to the various series of law reports now include, under the head Words, the judicial definitions of legal terms. Thus, by the industry of many workers, are being laid the foundations of a lexicon to the statute law of this country.

[The interpretation of statutes has been ably treated in (2) American. America by the late Mr. Theodore Sedgwick (*h*). The object of his treatise is "to explain the technical terminology that belongs to them (constitutional and statute law), to give their classification, describe their incidents, and finally to define the mode of their application; to declare the rules of interpretation by which they are, in cases of doubt, to be expounded, and to illustrate these rules by the light of adjudged cases" (*i*). His treatise has been of the greatest assistance in the preparation of the present work, and is often quoted from, for "the rules governing the application of statutes may, as a general proposition, be considered the same in both countries" (*k*). But the head of constitutional law is peculiar to American jurisprudence] and to the jurisprudence of those parts of the King's dominions which, like Canada and Australia, have federal constitutions (*l*); [for the Legislature of the United Kingdom is unfettered by any conditions as to the laws which it may make (*m*).]

4. [The importance of collecting together and succinctly stating the "legal rules for the interpretation of British statutes" (*n*), arises in the first place from the fact that "the subjects of this country are bound to construe rightly the statute

Importance of subject due (1) to necessity of knowing the rules.

(*f*) See 4th edit. by Theobald, 1905.

(*g*) 1st edit. 1890; 2nd edit. 1903. A Supplement is in preparation.

(*h*) A Treatise on the Rules which Govern the Interpretation and Construction of Statutory and Constitutional Law: 2nd edit. by John Norton Pomeroy.

(*i*) *L. c.* p. 17; and see pp. 19, 20.

(*k*) Sedgwick, *l. c.* p. 19. See also pp. 173—186, where the power of the judges to interpret laws is elaborately discussed. [In *United States v. McRae* (1867), 3 Ch. App. 79, 86, Lord Chelmsford said, as to an Act of Congress, the meaning of which was being discussed: "It is not suggested that there are any words in the Act of Congress which bear a peculiar meaning different from the ordinary one, or that the Acts of an American Legislature have a construction peculiar to themselves. I do not see that there is any impediment to an English judge with the Act of Congress before him construing it for himself, without further aid, just as he would an English Act of Parliament."]

(*l*) There are also certain legal limitations on the law-making powers of all legislative bodies in the British Empire other than the Imperial Parliament. See *post*, Part II. chap. ix.

(*m*) See Dicey, *Law of the Constitution* (6th edit.), p. 39.

(*n*) ["Our province," said Lord Westbury, in *Williams v. Bishop of Salisbury* (1863), 2 Moore, P. C. N. S. 376, 424, "is to ascertain the true construction of

law of the land; to aver in a court of justice that they have mistaken the law is a plea and Court is at liberty to receive" (o).

Another reason is, that while all British statutes "must be construed on the same principles" (p), whether the objects of the statute be (like the Foreign Enlistment Act, 59 Geo. 3, c. 69) of the utmost national importance, or whether the Act be merely an Act "regulating the merest points of practice or some such trifling matter" (p), those principles are not wholly the same as those which govern the construction either of Scotch or colonial statutes, or of other written instruments, such as wills, deeds, or parol agreements.]

It may be said that the rules for the construction of all written instruments, whether of a public or private character, are almost, if not entirely, the same. Sir George Jessel (q) and Lord Bowen (r) have both expressed this view; but though their opinion is valuable to correct any tendency to set up narrow distinctions, documents expressing the will of a Sovereign Legislature, and the result of political strife and compromise, can never be regarded in quite the same light as private documents, however solemnly prepared and authenticated.

(2) To difference of rules for construction of British statutes from those relating to colonial or Scotch Acts or to contracts or wills.

[No doubt, there are certain general principles, "on which," as Lord Blackburn said in *Wear River Commissioners v. Adamson* (1877), 2 App. Cas. 743, 763 (s), "the Courts of law act in construing instruments in writing, and a statute is an instrument in writing. In all cases the object is to see what is the intention expressed by the words used. But, from the imperfection of language, it is impossible to know what that intention is without

those articles of religion according to the legal rules for the interpretation of statutes." A similar phrase was adopted by Lord Blackburn in *Gardner v. Lucas* (1878), 3 App. Cas. 603; "we must construe the Act," said he, "according to the legal rules of construction." And in *Fletcher v. Hudson* (1880), 5 Ex. D. 287, 293, Brett, L.J., said: "We must construe Acts of Parliament according to the well-recognised rules of construction."

(o) [*The Charlotte* (1814), 1 Dods. Adm. 392, Sir W. Scott. In *Cooper v. Phibbs* (1867), L. R. 2 H. L. 149, 170, Lord Westbury said: "It is said *Ignorantia juris haud excusat*, but in that maxim the word *jus* is used in the sense of denoting general law, the ordinary law of the country. But when the word *jus* is used in the sense of denoting a private right, that maxim has no application. Private right of ownership is a matter of fact: it may be the result also of matter of law; but if parties contract under a mutual mistake and misapprehension as to their relative and respective rights, the result is that that agreement is liable to be set aside as having proceeded upon a common mistake." Similarly, in *Spread v. Morgan* (1864), 11 H. L. C. 588, 602, Lord Westbury observed that this maxim will not be carried so far as to expect every person to know the rules of equity on a subject, for instance, like that of election. "This Court has power," said Turner, L.J., in *Stone v. Godfrey* (1854), 5 De G. M. & G. 76, 90, "to relieve against mistakes in law as well as against mistakes in fact." On this subject see *Gastlight and Coke Co. v. ... Rail. Co.* (1892), 9 T. L. R. 98; Pollock, *Contracts* (7th edit.), 452; Leake, *Contracts* (6th edit.), 228.

(p) *Att.-Gen. v. Silleen* (1863), 2 H. & C. 431, 537, Bramwell, B.

(q) Parl. Pap. (1875), No. 208, p. 88; *Re Levy* (1881), 17 Ch. D. 746, 750.

(r) In *Curtis v. Stovin* (1889), 23 Q. B. D. 513.

(s) See also *Caledonian Rail. Co. v. North British Rail. Co.* (1881), 6 App. Cas. 114.

inquiring further, and seeing what the circumstances were with reference to which the words were used, and what was the object appearing from those circumstances which the person using them had in view." But at the same time we find that with regard to each particular kind of written instrument there are certain special rules which govern their construction.]

[The statute law of Scotland prior to the Union is not construed in precisely the same way as that of England. "The law of Scotland," said Lord Eldon, in *Johnstone v. Stott* (1802), 4 Paton (Sc. App.), 274, 285, "admits of more departure from the letter of its statutes than we have any idea of in this country. We have seen that the Courts of that country super-added provisions to their statutes, and they also do not scruple to enforce their statutes at times as gently as the statutes admit of being interpreted. We see here, too, that a Scotch statute may be lost by desuetude" (t).]

Scots Acts.

With regard to colonial Acts (u), it must not be assumed that the legal effect of the terms used is the same as it would be in an English statute. In *Western Counties Rail. Co. v. Anderson* (1892), 8 Times L. R. 595, 597, Lindley, L.J., said: "The plaintiff company is governed by the laws of Nova Scotia and of Canada. . . . These laws being in the English language, this Court is, of course, competent without the assistance of Canadian lawyers to understand the meaning of the words in which these laws are expressed; but the legal effect of that meaning must be ascertained from legal experts in the colonial laws, and must not be assumed to be the same as the legal effect in this country of similar language occurring in an English Act of Parliament."

Colonial Acts.

In *Peterswald v. Bartley* (1904), 1 Australia C. L. R. 497, 509, the words "duties of excise" in the Commonwealth Constitution Act, 1900, were interpreted as referring to excise as understood in Australia, and not to its meaning in statutes relating to the United Kingdom.

63 & 64 Vict.  
c. 12.

"The extent to which decisions in English Courts passed with

(t) Hereon see Bell, Dict. Law of Scotland, tit. "Desuetude;" *Smollett v. Buntin* (1730), 1 Paton, Sc. App. 26 (H. L.). It is improbable that any Court will hereafter hold any Scots Act to be in desuetude which has been omitted from the repeals effected by the Statute Law Revision (Scotland) Act, 1906, which may fairly be regarded as the indorsement by the Legislature of the opinion of the draftsman (expressed in col. 4 of the Bill as introduced) that certain enactments are obsolete or in desuetude.

(u) In *Trimble v. Hill* (1880), 5 App. Cas. 342, 344, the Judicial Committee held that in colonies where an enactment has been passed which is similar to an English enactment, if the English enactment has been judicially interpreted by an English Court of law, the colonial Courts should govern themselves by that English judicial interpretation when called upon to construe the colonial enactment. It is not unusual in colonial Acts to insert in the margin of each enactment the English enactment on which it is modelled. As to Indian and colonial interpretation Acts, see the list, *post*, Appendix C. A similar rule has been laid down in the United States as to the construction of statutes adopted from the legislation of other countries or states. *Interstate Traffic Commission v. Baltimore, &c. Railroad* (1891), 145 U. S. 263; *Whitney v. Fox* (1896), 166 U. S. 637.

reference to statutes of Parliament and the prerogatives of the Crown under the English law, will be a safe guide to the interpretation of Acts passed by the Indian Legislature, and the prerogatives of the Crown in India will depend very much upon the policy and course of Indian legislation and the powers of the Indian Legislature" (x).

The Judicial Committee of the Privy Council has not, however, to resort to the evidence of experts for the meaning or effect of such laws, being the supreme judicial tribunal for their interpretation (y). [In *H.M.'s Procureur v. Bruneau* (1866), L. R. 1 P. C. 169, 191, where the question to be decided was as to the meaning of a certain word in the Civil Code of the Mauritius (z), the Judicial Committee had in the first place "to ascertain the general principles by which the [French] Courts are governed in the construction of the Code;" and, having ascertained these principles, they then had to apply them in interpreting the particular word in dispute.] But where the law of the colony is based on the common or statute law of England, no reason exists for any exceptional rule.

Contracts.

In the construction of a contract there cannot be said to be any rules of law applicable, but "the governing principle is to ascertain the intention of the parties to the contract through the words they have used" (a), which words "are to be taken in the sense which the common usage of mankind has applied to them in reference to the context in which they are found" (b). It is seldom, in construing "mercantile contracts, that any technical or artificial rule of law can be brought to bear on their construction; the question really is the meaning of the language" (c), and "the grammatical meaning is, as in other cases, the meaning to be adopted, unless there be reason to the contrary" (d).

The main rules of construction applicable to contracts are well laid down by Sir Howard Elphinstone (*Conveyancing*, 5th ed., p. 24, and 1 L. Q. R. 466) with reference to deeds:—

*First.* "When the words used in a document are in their primary meanings unambiguous, and when such

(x) *Bell v. Madras Municipal Commissioners* (1902), Ind. L. R. 25 Madras, 457, 473, Bhashyam Ayyangar, J.

(y) To this there is, perhaps, one exception arising from Art. 74 of the Constitution of the Australian Commonwealth (63 & 64 Vict. c. 12, Sched.), and leave to appeal from other judgments of that Court, or from decisions of the Supreme Court of Canada, is only sparingly given, having regard to the august character of those tribunals: *Clergue v. Murray*, (1903) A. C. 521; *Daily Telegraph Newspaper Co. v. McLaughlin*, (1904) A. C. 776; *Victorian Railway Commissioners v. Brown*, (1906) A. C. 381.

(z) As to the sources of the law of this colony, see Preface to *Mauritius Laws* (edit. 1903).

(a) *McConnell v. Murphy* (1873), L. R. 5 P. C. 203, 218.

(b) *Lord v. Sydney Commissioners* (1858), 12 Moore, P. C. 473, 497.

(c) *McConnell v. Murphy* (1873), L. R. 5 P. C. at p. 219.]

(d) *Southwell v. Bowditch* (1876), 1 C. P. D. 374, 376, Jessel, M.R.

meanings are not excluded by the context, and are sensible with respect to the circumstances in which the author was placed at the time of writing, including in such circumstances the *status* of the persons to whom the document was addressed, such primary meanings must be taken to be those in which the author used" the words. This, with the modifications already indicated, is applicable to statutes.

*Second.* "Extrinsic evidence is admissible for the purpose of determining the primary meanings of the words employed, but not for any other purpose whatsoever."

*Third.* "Intrinsic evidence is admissible for the purpose of discovering the primary meaning of the words employed."

*Fourth.* "Where the primary meaning of any word is excluded by the context, we must affix to that word such of the meanings which it properly bears as will enable us to collect uniform and consistent intentions from every part of the document."

In these rules, by primary, sometimes called literal, meaning, is intended, not necessarily the primary etymological (*i.e.* literary or dictionary) meaning, but either—

- (1) The meaning usually affixed to the words at the time when the author of the document wrote, by persons of the class to which he belonged; or,
- (2) The meaning in which the words must have been used by such persons, having regard to the circumstances at the time of execution; or,
- (3) The meaning which it can be conclusively shown that the author was in the habit of affixing to them.

It follows that the primary meaning of a technical word in a document relating to the art or science to which it belongs is its technical meaning. Thus, in a legal document, wherever a word occurs which in law bears a technical meaning, that technical meaning, and not the popular meaning, if any, is the primary meaning for the purpose (*e*).

Decisions upon the construction of deeds and contracts are not further referred to in this work, because they are rarely of any assistance in construing an Act, save so far as they evidence contemporary exposition or the practice of conveyancers as interpreting a statute long in force. The difficulty of applying such decisions is, that the deeds may be drafted to evade the Act in question or with intentions quite irrespective of the Act.

In *Reid v. Reid* (1886), 31 Ch. D. 402, the Court rejected as useless for the construction of the Married Women's Property

(*e*) Elphinstone, *Conveyancing* (5th edit.), 25; and see Norton on Deeds (1906), p. 56 *et seq.*

Act, 1882, decisions as to the meaning of covenants (*f*) in marriage settlements, on the ground (p. 406) that such cases must be approached with a presumption that they were intended to exclude the husband from acquiring the property of his wife if it should fall into possession during coverture; whereas, in dealing with the Act, no such presumption arose. And in *Midland Rail. Co. v. Robinson* (1889), 15 App. Cas. 19, in construing the word "mines" in the Railways Clauses Act, 1845, Lord Herschell said (p. 27):—"In dealing with this case, it must be remembered that all your lordships have to do is to interpret the words of the enactment, and not to lay down, even if it were possible, any general rule as to the interpretation of the word 'mines.' I doubt whether much assistance is to be obtained from cases in which a construction has been put upon that word in instruments embodying merely agreements between the parties to them, unaffected by any statutory enactment. In such agreements, in the absence of a distinct indication of the contrary intention, it is always to be assumed that the reserved mines are only to be worked in such a manner as is consistent with the surface remaining undisturbed."

Wills.

With regard to the construction of wills, although the rules as to the interpretation of statutes and of wills are, to a certain extent, analogous, and although some judges have stated that, in their opinion, "a will, especially one of personal property, ought to be construed according to the rules of construction applicable to all documents and not according to artificial rules" (*g*), there are to be observed "many and striking discrepancies, such, for instance, as the rules which govern the evidence to be admitted in explaining ambiguities in wills, the arbitrary principles which have been adopted for their construction, and the vague discretion exercised by the Courts under the name of the doctrine of *cy-près*" (*h*). Decisions on the construction of wills are, therefore, of little or no value in interpreting statutes. They are far too numerous in the law reports, and the rules of construction laid down almost deserve the description of Lord Halsbury (*i*), "as a mode of arguing in a

(*f*) See p. 410, Fry, L.J.

(*g*) In *Grant v. Grant* (1870), L. R. 5 C. P. 727, Blackburn, J., approved his statement in Blackburn's Contract of Sale, p. 49: "A will is the language of the testator, soliloquising, if one may use the phrase, and the Court, in construing his language, may properly take into account all he knew at the time, in order to see in what sense the words were used." And in *Biddulph v. Lees* (1858), E. B. & E. 289, at p. 317, Martin, B., cited with approval the rule for the construction of wills enunciated by Lord Kingsdown in *Towns v. Wentworth* (1858), 11 Moore, P. C. 526, 543; see also *Re Bedson's Trusts* (1885), 23 Ch. D. 525, Brett, M.R. "The authorities show conclusively that the same principles apply in construing a deed and in construing a will." *Re Friend's Settlement*, (1906) 1 Ch. 7, 12, 13, Sewell, J., who states and follows the opinions of Lord St. Leonards and Lord Brougham in *Cole v. Sewell* (1848), 2 H. L. C. 186.

(*h*) Sedgwick, Statutory Law (2nd edit.), p. 223.

(*i*) *Leader v. Duffey* (1888), 13 App. Cas. 294, 301. Cf. his remarks on the same point in *Scall v. Rawlins*, (1892) App. Cas. 342, 343.



vicious circle." But "such *dicta* are uttered under the extreme provocation of having irrelevant cases cited, and must not be too curiously scanned. What they really mean is, that presumptions of meaning are not to be pressed too far. A rigid rule of construction is a contradiction in terms. If it does not yield to an evident contrary intention it is a rule of law and not of construction, as Mr. Vaughan Hawkins pointed out many years ago" <sup>(k)</sup>.

5. Sir H. Elphinstone has pointed out <sup>(l)</sup> with reference to deeds the distinction between rules of law and rules of construction. A rule of law exists independently of the circumstances of the parties to a deed, and is inflexible and paramount to the intention expressed in the deed. A rule of law cannot be said to control the construction of a statute, inasmuch as a British statute is itself part of the supreme law of the land and overrides any pre-existing rules with which it is inconsistent. A rule or canon of construction, whether of will, deed, or statute, is not inflexible, but is merely a presumption in favour of a particular meaning in case of ambiguity. In *L. N. W. R. v. Evans*, (1893) 1 Ch. 16, 27, this has been well expressed by Bowen, L.J., with reference to the question whether it was intended by a private Act to grant a right of support by subjacent strata to a railway constructed under statutory powers: "When we pass from private grants between individuals to titles and rights created by an Act of Parliament, the exact subject-matter is altered, but similar rules of good sense and law obtain when we have to interpret sections which do not expressly decide the matter. These canons do not override the language of a statute where the language is clear: they are only guides to enable us to understand what is inferential. In each case the Act of Parliament is all-powerful, and when its meaning is unequivocally expressed the necessity for rules of construction disappears and reaches its vanishing point." Consequently a rule of construction with reference to statute must always be a proposition in the following form:—

Distinction between rules of law and rules of construction.

"If a given proposition or phrase A may mean B, C, or D, it must be taken to mean B when occurring in an Act relating to a particular subject, unless the context (or the circumstances under which the Act was passed so far as they may be proved or judicially noticed) exclude that meaning."

This description of a rule of construction is substantially recognised in recent legislation both by the form in which interpretation clauses are usually drafted and by the Interpretation Act, 1889 <sup>(m)</sup>, which, though mainly intended as an aid to the draftsmen of future Acts and to facilitate the expurgation

52 & 53 Vict. c. 63.

<sup>(k)</sup> Sir F. Pollock, 4 Law Quarterly Review, 488.

<sup>(l)</sup> On Interpretation of Deeds, Pref. p. 5. See Conveyancing, 3rd edit. p. 29, and 1 L. Q. R. 466.

<sup>(m)</sup> *Post*, Appendix C.

and revision of the statute book, has given statutory authority to a series of rules of construction, not as being inflexible rules of law, but as presumptively applicable "unless a contrary intention appears;" and it is doubtful whether it is safe to lay down beforehand canons of construction by reference to which the objects of future statutes are to be defined, except those which require the Court to consider the history of the legislation on the subject under consideration, the nature of the subject, and the mode in which the legislation is framed, and the rules of construction applicable to all documents in general (*n*).

Distinction  
between inter-  
pretation and  
casuistry.

6. There is a distinction sometimes forgotten between the judicial construction of statutes and mere casuistry or metaphysics. In some recent decisions the Courts have been tempted to discuss the limits of free will in deciding what "voluntary" meant in a revenue Act (*o*), and in construing the Roman maxim, *Volenti non fit injuria*, as applied to the Employers' Liability Act, 1880 (*p*). Fore-knowledge and the foundations of rational belief came in question in *Penny v. Hanson* (1887), 18 Q. B. D. 478 (*q*), where the Court had to decide whether an astrologer could sanely or honestly believe in his power to tell fortunes. And in *Reg. v. Clarence* (*r*) and *Reg. v. Dee* (*s*) the nature of assent on the part of married women to sexual intercourse was somewhat casuistically discussed by the many judges before whom those cases were heard.

Classification  
of cases upon  
statutes.

7. ["It seldom happens," said the Court in the case of *Scott v. Legg* (1876), 2 Ex. D. 39, 42, "that the framer of an Act of Parliament has in contemplation all the cases that are likely to arise under it, therefore the language used seldom fits every possible case;" consequently the difficulties as to the interpretation of statutes "consist chiefly in the application to various and complicated circumstances of words which are of a wide and general meaning" (*t*), and a very large proportion of the cases which turn upon the construction of Acts of Parliament arise from the fact that the particular point under consideration was not present to the mind of the draftsman when he drew the Act (*u*). Such cases, therefore, are simply decisions upon the language used in the particular statute as applied to the particular case under consideration, and can be only to a very slight degree useful for the purpose of elucidating the general rules upon which statutes are to be construed (*x*).]

(*n*) *Lamplugh v. Norton* (1889), 22 Q. B. D. 452, 459, Bowen, L.J.

(*o*) *Re New University Club* (1887), 18 Q. B. D. 720.

(*p*) *Smith v. Baker*, (1891) App. Cas. 325; *Williams v. Birmingham Battery, &c. Co.*, (1899) 2 Q. B. 338, C. A.; and *Re Entwistle*, (1899) 1 Q. B. 846.

(*q*) See 3 Law Quarterly Review, 359.

(*r*) (1888), 22 Q. B. D. 23.

(*s*) (1884), 14 L. R. Ir. 468.

(*t*) *Att.-Gen. v. Cecil* (1870), L. R. 5 Ex. 263, 270, Kelly, C.B.

(*u*) *Clementson v. Mason* (1875), L. R. 10 C. P. 209, 221, Denman, J.

(*x*) See *Fishburn v. Hollingshead*, (1891) 2 Ch. 371; and 6 Law Quarterly Review, 301.

The cases upon statutes, which yearly occupy a larger portion of the reports, fall into three classes—

- (1) Those which lay down general rules of construction ;
- (2) Those which decide on the applicability of the established rule to particular enactments ; and
- (3) Those which decide whether the accepted construction of an enactment includes or excludes a particular set of facts.

When the meaning of an Act is settled, a merely illustrative decision may require record, but its details are usually unimportant (*y*), and those decisions alone are of general importance which accurately and succinctly state the general rules of construction, and point out the proper methods of applying them to each enactment which calls for judicial interpretation, and the limits of their applicability. It is necessary to keep in view the caution of Cotton, L.J., in *Reid v. Reid* (1886), 31 Ch. D. 402, 405 : "The question for our consideration is, what is the true meaning of the language which the Legislature has employed ? Cases on the construction of other Acts or instruments generally give very little help to the Court, but if there is any principle laid down we ought not to disregard them in considering a different Act or instrument."

But in the case of statutes consolidating former law or adopting words from former Acts which have been judicially construed, the case law on the enactments consolidated or copied may be of great value in interpretation (*z*) ; and in the case of the adoption by a Colonial Legislature of the substance of a British statute the same may be said. And in the interpretation of the Constitution of the Australian Commonwealth it has been held reasonable to infer that when the framers of that instrument inserted provisions indistinguishable in substance, though varied in form, from the provisions of other legislative enactments which had received judicial interpretation, they intended that such provisions should receive like interpretation (*a*).

(*y*) [Sedgwick (Statutory Law (2nd edit.), pp. 254, 311, 316) cites and comments upon many cases where the only point to be determined was how to apply a particular enactment to a particular set of circumstances, with a view to proving that the Courts still decide cases upon what is called the equity of the statute (see *Vernon's case* (1672), 4 Co. Rep. 1 *a*, 4 *a*, and *post*, p. 112) ; but it will be found, if these cases are examined, that no reasons are given by the Courts for those decisions, and that in fact they merely decided as they considered best under the particular circumstances ; for, as Hannen, J., observed in *R. v. Surrey* (1871), L. R. 6 Q. B. 87, 93, "the intention of the Legislature must depend to a great extent upon the particular object of the statute that has to be construed."] See also *Lucas v. Dixon* (1880), 22 Q. B. D. 359, Lord Esher, M.R.

(*z*) See *Ex parte Campbell* (1870), L. R. 5 Ch. App. 703 ; Elphinstone, Conveyancing (5th edit.), 28.

(*a*) *D'Emden v. Pedder* (1904), 1 Australia C. L. R. 91, 112, Griffith, C.J. Under this ruling the High Court of Australia has interpreted the Common-

[To attempt to collect all these decisions would entail a labour disproportionate to the result, for in a large number of such cases the statutes in question have been repealed, and, where they are still in force, the particular points in dispute are extremely unlikely to occur again, and the decisions are easily found in treatises relating to the branch of law dealt with by the particular Act. This work is therefore confined to the enunciation of general principles of construction, and no attempt is made to collect all the decisions of the Courts upon mere words. But in the chapter on the Interpretation of Words are collected such judicial *dicta* as seem to explain on what principles the meaning of words used in statutes is to be arrived at, and in an Appendix is given a list (*b*) of words often to be met with in statutes which have received judicial interpretation.]

Strict and  
liberal con-  
struction.

8. [It has been usual in treatises on the interpretation of statutes to have a chapter on strict and liberal construction, and to specify what kind of statutes are commonly construed strictly, and what kinds are construed liberally. It will be seen, however, that the rules on this head are extremely vague, if, indeed, it can be said that there are any rules at all (*c*); the truth being that, "The judges have perpetually taken refuge in the clouds and mist of strict and liberal interpretation whenever they have been pressed by the hardship or injustice of a particular case" (*d*); and, as Lord Hobart said in *Sheffield v. Ratcliffe* (1616), Hob. 346, "If you ask me by what rules the judges guided themselves in diverse expositions of the self-same word and sentence, I answer, it is by that liberty and authority which judges have over statute laws according to reason and best convenience to mould them to the truest and best use." In this treatise, therefore, a different plan has been adopted with regard to the enunciation of the rules which govern the construction of statutes—namely, in the first instance, to lay down as precisely as possible the rules which regulate the construction of all statutes, the language of which is clear and unequivocal, and then, in the next place, to state in what way the meaning of obscurely worded statutes may legitimately be arrived at. By dealing with the subject in this way, it is hoped that it will be found that all the various

wealth Constitution by reference to decisions on the corresponding parts of the United States Constitution, *e.g.*, following *McCulloch v. Maryland* (1829), 4 Wheat. U. S. 2. And see *Sydney Municipal Council v. Commonwealth* (1904), 1 Australia C. L. R. 210, 239, O'Connor, J.

(*b*) This list is not exhaustive. Its omissions can be supplemented from Stroud's Judicial Dictionary and the various Digests, *sub tit.* "Words."

(*c*) See *Ex parte Milne* (1889), 22 Q. B. D. 685, 695, Esher, M.R.; and [Dwarris, Statutes (2nd edit.), par. 17; Sedgwick, Statutory Law (2nd edit.), pp. 256—316.] In *Hill v. Board* (1879), 4 Q. B. D. 433, 442, Pollock, B., said: "It is a dangerous doctrine, and one contrary to the true rules of construction, to require or allow a judge to give an effect to the same words wider or narrower in proportion as he might think the general scope of the Act in which they were found of great or small public importance."

(*d*) Sedgwick, Statutory Law (2nd edit.), 307.

rules which exist with regard to the interpretation of statutes are stated in as plain a manner as the nature of the case will permit.]

9. [The rules enunciated in this treatise as to the interpretation and effect of statutes are in the main taken from the decisions of the Courts of law or the *dicta* of the judges.] Parliament has power by statute to declare the common law or the meaning of any prior statute, and may declare wrong or repeal any judicial legislation effected by interpretation or misinterpretation of statutes, and may make the declaratory or repealing enactment retrospective. But subject to this power the interpretation of statutes is within the special province and under the exclusive control of the judicature, a control exercised only in the course of a legal proceeding and generally only upon examination of the terms of the statute itself (*e*).

Extent and effect of judicial authority to interpret statutes.

The sole judicial authority ultimately competent to construe a statute extending to the whole or to any part of the United Kingdom is the House of Lords.

The interpretations, whether of the Crown itself or of officers or Departments of State, or of resolutions of one House of Parliament (*f*), or of subordinate judicial authorities, ecclesiastical or temporal, must yield to the judicial interpretation of the Supreme Court and of the House of Lords, which will never adopt an erroneous construction, of however long standing, unless it justifies the application of the principle *communis error facit jus*. Coke (2 Inst. 618), in speaking of judicial authority, said: "Which answers and resolutions, although they were not enacted by authority of Parliament, as our statute of *Articuli cleri* in 9 Edw. 2 was: yet being resolved unanimously by all the judges of England and Barons of the Exchequer, are, for matters in law, of highest authority sent to the Court of Parliament." One of the resolutions referred to was that the interpretation of statutes concerning the clergy belongs to the judges of the Common Law.

The marked tendency of judicial decisions is to render uniform for all the King's dominions the rules relating to the construction of statutes (*g*). As Lord Watson said in *Cooper v.*

(*e*) See Dicey, Law of the Constitution (6th edit.), 351.

(*f*) Dicey, *l. c.* 351. In the South African Republic resolutions of the Volksraad were declared to be equivalent to laws. Within a certain limited sphere, by the law or custom of Parliament resolutions of either House, though not statutes or laws, are only in a very limited sense subject to revision or disregard by the ordinary Courts of law. That sphere is that within which either House acts in exercise of its privilege to regulate its own internal concerns or to enforce its authority. Dicey, Law of Constitution (6th edit.), 52-56; *Bradlaugh v. Gosset* (1884), 12 Q. B. D. 271; *Att.-Gen. v. Bradlaugh* (1884), 14 Q. B. D. 667, C. A.; May, Parl. Pr. (10th edit.), 128.

(*g*) See *Income Tax Commissioners v. Pemsel*, (1891) App. Cas. 532, 557, 577, Lords Watson and Macnaghten; and per Lords Cottenham and Brougham in *Duncan v. Findlater*, 1891, 1 F. 1, Rep. 339, 345, where it was unsuccessfully argued that to adopt English decisions on a British statute applying to England and

*Cooper* (1888), 13 App. Cas. 88, 104, the House of Lords is the *commune forum* of England, Scotland and Ireland, and takes judicial notice of the law of each country in an appeal from the other (*i*). In dealing with the statutes common to the whole United Kingdom, the House of Lords has to lay down rules applicable to all those countries alike, and to consider and reconcile, or select from the conflicting decisions of Scotch, English and Irish Courts upon such enactments (*k*).

The Judicial Committee of the Privy Council is in a like manner the *commune forum* for the rest of the empire (*l*), and composed of almost the same judges as sit in the House of Lords. The decisions of these august Courts tend to restrain any disposition of subordinate Courts in different parts of the empire to set up divergent rules of construction, and to produce practical uniformity as to rules of construction. Where such restraint cannot be imposed, in some cases the different moral sentiment in different parts of the United Kingdom has led to a different construction of the same statute. This is conspicuously illustrated by the divergence between the English and the Scotch and the Irish Courts on the application of sect. 2 of the Prevention of Cruelty to Animals Act, 1849 (12 & 13 Vict. c. 92), to the dishorning of cattle (*m*). No appeal being available to the House of Lords on this statute, this divergence can be settled only by legislation.

Interpretation  
of statutes  
sole province  
of the tem-  
poral Courts.

[As Eyre, C.J., pointed out to the House of Lords in *Home v. Lord Camden* (1795), 6 Bro. Parl. Cas. 201, 1 H. Bl. 476; 2 *ib.* 533, the duty of expounding Acts of Parliament devolves solely upon the "King's temporal Courts, and your Lordships in the last instance" (*n*). That duty was once claimed as a right

Scotland, which conflicted with Scotch decisions on the same Act, was an attempt to overrule Scotch in favour of English law.

(*i*) See *Ford v. Orr-Ewing* (1884), 9 App. Cas. 37; (1885), 10 App. Cas. 453.

(*k*) English judges differ as to whether they are bound by Scotch decisions on an Act common to England and Scotland: see *Blake v. Midland Rail. Co.* (1852), 18 Q. B. 98, 109. Coleridge, J.; *Ford v. Wiley* (1889), 23 Q. B. D. 203, Coleridge, C.J. The true rule seems to be that such decisions are not binding in the same sense as those of English Courts of concurrent or superior jurisdiction; but that expediency and comity are in favour of their acceptance until the House of Lords decides the matter finally. In the Railway and Canal Traffic Act, 1888, it was recognised by Parliament that the Courts of England, Scotland, or Ireland might differ as to the interpretation of the Act (51 & 52 Vict. c. 25, s. 17 (*5*)).

(*l*) The Courts from which and the conditions under which appeals lie are stated in Wheeler, Privy Council Practice. As to the history of appeals from Australia to the King in Council, see *Parkin v. James* (1905), 2 Australia C. L. R. 315, 330, Griffith, C.J. As to appeals from the Supreme Court of Canada, see *Clergue v. Murray*, (1903) A. C. 521; and from the High Court of Australia, see *Victorian Railway Commissioners v. Brown*, (1906) A. C. 381.

(*m*) *Ford v. Wiley* (1889), 23 Q. B. D. 203, which conflicts with *R. v. McDonagh* (1891), 28 L. R. Ir. 204; *Renton v. Wilson* (1888), 15 Rettie (Justiciary Sc.), 84; and *Todrick v. Wilson* (1891), 18 Rettie (Justiciary Sc.), 41.

(*n*) ["A judge is theoretically bound to take judicial notice of all Acts of Parliament," he is bound also "theoretically to know the contents of them" all, and consequently it may not be assumed, when not disputed by the pleadings, that a right has been created by an Act of Parliament, which, as a matter

by James I., and Lord Coke has given us (o) a report of the opinion on the point which he delivered, "with the clear consent of all the judges of England and the Barons of the Exchequer," to the effect that "the King in his own person cannot adjudge any case." And "the province of the Legislature," as the Court of Exchequer said in *Russell v. Ledsam* (1845), 14 M. & W. 574, 589, "is not to construe, but to enact, and their opinion, not expressed in the form of law as a declaratory provision would be (p), is not binding on Courts whose duty it is to expound the statutes they [the Legislature] have enacted." [It would be no easy task (q) to ascertain at what period and by what means the Courts of law obtained the right of being the sole expositors of the statutes of the realm. In the early ages of the English system it appears that the line between the judiciary and the Legislature was not distinctly marked (r). Originally the Houses of Lords and Commons sat together, and the Courts of law were clearly subordinate to the Parliament. A writ of error lay from them to the Parliament, and they were accustomed even to consult Parliament before they decided points of difficulty and importance (s). But it is now one of the axioms of our law that it is not only "the right," but also the duty of the judiciary to expound and interpret doubtful provisions of our legislative enactments (t).]

Courts of spiritual jurisdiction have power to construe a statute which comes incidentally before them in the course of a proceeding where they have jurisdiction (u). But the construction adopted does not bind the [temporal Courts, whose special province it is to expound the statute law; and "the possibility," as the judges pointed out in *Home v. Lord Camden* (1795), 2 H. Bl. 536, "of two different rules prevailing upon the same law, one in the King's temporal Courts, and the other in Courts of peculiar jurisdiction, is effectually prevented without any unreason-

Temporal Courts may issue prohibition to prevent Courts of peculiar jurisdiction from acting on a wrong construction of a statute.

of fact, has not been so created, for the judge is "theoretically bound to be aware that there is no such Act of Parliament": *Chilton v. Corporation of London* (1878), 7 Ch. D. 735, 740, Jessel, M.R.

(o) *Prohibitions del Roy* (1607), 12 Co. Rep. 63.]

(p) See below, p. 155, where the meaning of the phrase "parliamentary exposition of a statute" is explained.

(q) ["We have no means of tracing the manner in which the transfer of authority to the judges was effected, but at a very early day we find it asserted in more than its present plenitude": Sedgwick, *Statutory Law* (2nd edit.), 174; see also Dwaris on *Statutes* (2nd edit.), pp. 708, 792.]

(r) Sedgwick, *l. c.* p. 18.

(s) [Per Sir J. Campbell, *arguendo* in *Stockdale v. Hansard* (1837), 9 A. & E. 1; 3 St. Tr. N. S. 723.]

(t) [Sedgwick, *l. c.* p. 173. And in *Sheffield v. Ratcliffe* (1616), Hob. 346, cited in *Att.-Gen. v. Pougett* (1816), 2 Price, 381, 383, it is said, in answer to the inquiry by what rule judges were guided in expounding statutes, "It is by that liberty and authority that judges have over laws, especially over statute laws, according to reason and best convenience to mould them to the truest and best use." But the Court must be judges, and not lawgivers. Erskine, *Inst. Law Sc.* 1, 1, 50.

(u) *Hall v. Maule* (1838), 7 A. & E. 721.

able interference or breaking in upon the Courts of peculiar jurisdiction by the temporal Courts issuing their prohibitions in every such case. And this is no more than saying, 'proceed to the very extent of your jurisdiction without interference from us, only remembering that . . . when any question arises touching the exposition of the statute law, if the subject is originally of temporal jurisdiction and comes incidentally before you, it is to be expounded by you as we expound it, or if the statute concerns your proceedings only, you are to expound it as we say it ought to be expounded, when the question is brought before us in prohibitions.' " Therefore, even with regard to the exposition by ecclesiastical Courts of Acts of Parliament which relate exclusively to ecclesiastical matters, the ecclesiastical Courts must accept the interpretation put upon the statute by the temporal Court. Lord Coke (2 Inst. 601) says that this was stated as their opinion "by all the judges of England and the Barons of the Exchequer upon mature deliberation and consideration with one unanimous consent," in answer to certain questions put to them by the Lords of the Council with respect to the complaint exhibited by Archbishop Bancroft in the name of the whole clergy, in Michaelmas Term, *anno* 3 Jac. I. (1605). The complaint (as stated at p. 614) was "that no temporal judges, under colour of authority to interpret statutes, ought, in favour of their prohibitions, to make causes ecclesiastical to be of temporal cognizance." To which the answer was, "that as for the judges expounding of statutes, which concern the ecclesiastical government or proceedings, it belongeth to the temporal judges." And, after setting out the whole of these complaints and the answers thereto, Coke adds, at p. 618: "We will now proceed to the exposition of the same [*i.e.*, 9 Edw. II.], which office the clergy claimed, viz., to interpret all statute laws concerning the clergy; but it was resolved by all the judges of England, that the interpretation of all statutes concerning the clergy, being parcel of the laws of the realm, do belong to the judges of the common law." It is, in fact, now well settled, that if ecclesiastical Courts are called upon to construe statutes, no matter what they relate to, they are bound to construe them upon the same principles as the Courts of common law (*x*). "Whatever," said Lord North, in *Carter v. Crawley* (1681), Sir T. Raym. 496, "is determined by the common law to be the true meaning of this Act, must be a rule to the ecclesiastical

(*x*) These decisions were given with reference to the relations of the superior Courts of common law to Courts of limited or special jurisdiction, such as the Court of Admiralty, or to local Courts of record, or to Courts of ecclesiastical jurisdiction. Under the modern judicial system the powers of review over inferior Courts are clearly established, and therewith the authority of the Supreme Court to revise any erroneous reading of a statute by an inferior Court. And the jurisdiction of ecclesiastical Courts has been in part transferred to the Supreme Court, in part extinguished; and as to the rest, except where temporal matters are involved, is under the review of the Judicial Committee of the Privy Council.



Courts, for the Courts of common law are intrusted with the exposition of Acts of Parliament, and we ought not to suffer them to proceed in any other manner than shall be adjudged by the King's Courts to be the true meaning of the Act." This was finally decided in *Gould v. Gapper* (1804), 5 East, 345. In that case it was contended that the misconstruction of a statute by an ecclesiastical Court was matter of appeal and not of prohibition. Lord Ellenborough, however, in an elaborate judgment, in which he reviewed all the previous authorities, held otherwise, on the broad ground that the Courts of common law have in all cases, in which matter of a temporal nature has incidentally arisen, granted prohibitions to Courts acting by the rules of the civil law, where such Courts have decided on such temporal matters in a manner different from that in which the Courts of common law would decide the same (*y*).] The result of these decisions is twofold: (1) That judgments of ecclesiastical Courts and even, it is submitted, of the Judicial Committee on appeal from them, as to the construction of statutes, are not conclusive upon the Supreme Court or the House of Lords (*z*). (2) That the High Court has authority to interfere by prohibition or *mandamus* when an ecclesiastical Court construes a statute otherwise than in accordance with the principles acted upon by the Supreme Court, if the effect of such construction is to lead the ecclesiastical Court to assume a jurisdiction not given to it or to deprive a suitor of right secured to him by common law or statute (*a*). And this jurisdiction has in recent years been invoked by ecclesiastics who hold strongly the incompetence of temporal Courts in ecclesiastical matters (*b*).

(*y*) The importance of this rule has been accentuated by *Read v. Bishop of Lincoln* (1888), 13 P. D. 221; 14 *ib.* 148; (1892) App. Cas. 644. The Prayer Book (14 Car. 2, c. 4, s. 1; 1 Rev. Stat. (2nd ed.), 633, n.), and Articles of Religion (13 Eliz. c. 12; 14 Car. 2, c. 4, s. 26), are scheduled to Acts of Parliament. In *Julius v. The Bishop of Oxford* (1880), 5 App. Cas. 214, and in *Allcroft v. The Bishop of London*, (1891) App. Cas. 666, the supremacy of the temporal Courts in matters regulated by statute over the ecclesiastical Courts was fully recognised, and the bishops were regarded as standing much in the position of justices of the peace as to the exercise of their functions. In matters relating to Convocation and its mode of election, the temporal Courts have no jurisdiction, although with reference to the election of municipal officers the Courts are competent: *R. v. Archbishop of York* (1888), 20 Q. B. D. 740.

(*z*) *Mackonochie v. Lord Penzance* (1881), 6 App. Cas. 424, Lord Blackburn.

(*a*) See *Vesley v. Burder* (1841), 11 A. & E. 265, Tindal, C.J.; *R. v. Archbishop of Canterbury*, (1902) 2 K. B. 503; 71 L. J. K. B. 894, 916.

(*b*) *Mackonochie v. Lord Penzance*, *ubi sup.*; *Combe v. De la Bere* (1881), 22 Ch. D. 316; *Enraght v. Lord Penzance* (1882), 7 App. Cas. 240.

## CHAPTER II.

## THE DRAFTING OF STATUTES.

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Statutes need not be drafted according to any particular form.

1. "THE Legislature," said the twelve judges in *Longmead's case* (1795), Leach, C. C. 694, 696, "when they intend to pass, to continue, or to repeal a law, are not bound to use any precise form of words." Consequently we find that at different periods of English history statutes have been drawn in different ways and according to different methods.

Statutes originally drafted by judges.

2. Till 1487 the judges, as a rule, drafted the statutes in Latin or Norman French by the light of the Parliament Rolls, which were not engrossed until the conclusion of each Parliament. In other words, the Houses of Parliament, or one of them, petitioned for remedy of a particular grievance, but left the terms of the remedial Act to the King in Council (*a*). The statutes, when drafted, were engrossed on the statute roll now preserved in the Tower. "Parliament recognised that those who administered the law were supposed to have a real, and not a merely nominal, hearing in the making of laws" (*b*). That the judges believed their right to be constitutional appears from the fact that the Chancellor and the judges (in 15 Edw. 3) protested against a number of statutes on the grounds—(1) That they did not assent to the making, or to the form, of the statutes;

(*a*) Stubbs, Const. Hist. vol. ii. 571, 575; Anson, Law and Custom of the Constitution (4th ed.), vol. i. p. 240.

(*b*) Y. B. 14 & 15 Edw. 3, Pref. by Pike, p. lxii. The judges are still summoned in each Parliament to attend on the House of Lords: Anson, Law, &c. of Constitution (4th edit.), vol. i. p. 53.

(2) That they could not observe the statutes if contrary to the laws and usages of the realm which they were sworn to keep. These protests involved the contentions that the law could not be changed by Act of Parliament, or that there could not be an operative Act if the Chancellor, Treasurer, and judges were opposed to its provisions, neither of which has now any constitutional validity (*c*). Drafting by the judges was contemporaneous with the Statute Rolls (1278—1468). It has to some extent a parallel in the modern practice of settling only the general principles of law by statute, and giving judicial or other departments of State authority to make rules for the execution of statutes (*d*). It led to difficulties and controversies between the Commons and the Crown (*e*), and occasionally to the omission of a statute actually passed, or the promulgation of a statute which had not received the necessary assent, and was finally discontinued in the reign of Henry VII. Nor are the productions of the early judges marked by any special accuracy of language. ["In ancient statutes," as Lord Ellenborough observed in *Wilson v. Knubley* (1806), 7 East, 128, 136, as to 4 Edw. 3, c. 7, "no great precision of language prevailed, and the words were very loose and general."]

In the reign of Henry VI. the practice began of sending the demands of the two Houses to the King in the form of a bill for his acceptance or rejection. In other words, the Houses of Parliament took away from the Crown and the judiciary the power of settling the form of a statute (*f*). In 1433 the words "by authority of Parliament" were added to the words of enactment, and from 1 Hen. 7 all reference in the statutes to petition is dropped, the method of legislation by bill being then fully established (*g*).

In the reign of Richard III. the sessional publication of printed statutes began, and from 1487 the statute roll was no longer made up in the old form. English superseded Latin and French, and Parliament appears to have handed over the drafting of statutes to conveyancers, who were encouraged to prolixity by the invention of printing, and diluted their native language by that cautious use of synonyms (*h*) which is the common characteristic of deeds and statutes. From this time [a wordy style (*i*) was introduced, not only into the drafting of

Subsequently  
by convey-  
ancers.

(*c*) *Loc. cit.* p. lviii.; see Ilbert, *Legislative Methods and Forms*, p. 77.

(*d*) For a list of the very numerous statutes giving such power, and of the subordinate legislation effected under such statutes, see Index of Statutory Rules and Orders in force at end of 1903.

(*e*) See 1 Clifford, *History of Private Bill Legislation*, 326.

(*f*) Stubbs, *Const. Hist.* vol. ii. p. 588; Anson, *Law and Custom of the Constitution* (4th ed.), vol. i. p. 241.

(*g*) Stubbs, vol. ii. 590; see the Act 11 Hen. 6; 1 Stat. Rev. (2nd edit.) 219.

(*h*) This may have been originally due to uncertainty as to which of several English words accurately rendered a Latin or Norman French law term.

(*i*) ["A remarkable circumstance of the statutes of Henry VIII. is the pro-

Judicial  
criticism of  
statutory  
language.

statutes, but also in deeds of conveyance and other legal documents, which continued in full use as late as 1861, so that "the true objection to modern statutes is rather their prolixity than their want of perspicuity" (*k*).]

3. [The phraseology of Acts of Parliament has been subjected to much adverse judicial criticism, many judges having, like Lord Campbell, a keen sense of "the vast superiority of judge-made law over the crude enactments of the legislature," and a disposition for what has been described as "drawing the fang teeth of an Act of Parliament." Sir Alexander Cockburn, in a speech at the Guildhall, March 9, 1876, described Acts of Parliament as being "more or less unintelligible, by reason of the uncouth, barbarous phraseology in which they are framed;" and he attributed this to the fact that "the work of framing them is committed to few hands, while the task is a Herculean one, far beyond the strength of the men employed properly to discharge." Particular statutes, such as the Franchise Acts (*l*), the Married Women's Property Act, 1882 (*m*), the Divided Parishes Act, 1876 (*n*), the Bills of Sale Act, 1882 (*o*), the Infants' Relief Act, 1874 (*p*), certain parts of the County Courts Act, 1888 (*q*), and particularly the Workmen's Compensation Act, 1897, have brought judicial execration on the conjoint efforts of draftsman and Legislature. In *Thomas v. Kelly* (1888), 13 App. Cas. 506, 517, Lord Macnaghten said: "To say that the Bills of Sale Act (1878) Amendment Act, 1882, is well drawn, or that its meaning is reasonably clear, would be to affirm a proposition to which I think few lawyers would subscribe, and which seems to be contradicted by the mass of litigation which the Act has produced, and is producing every day. For my own part, the more I have occasion to study the Act the more convinced I am that it is beset with difficulties which can only be removed by legislation. At the same time I cannot help thinking that some of the puzzles which were presented in the course of the argument disappear if the scope of the Act is steadily kept in view." In speaking of one of the private Acts of the New River Co. (15 & 16 Vict. c. clx.), Lord Herschell said (*r*): "It has been my lot to attempt to

digious length to which they ran." (Reeves' History of English Law, by Finlason, vol. iii. p. 426.)]

(*k*) Barrington, Observations on Statutes (3rd edit.), 175.

(*l*) *Bradley v. Baylis* (1881), 8 Q. B. D. 210, 235, Brett, L.J.; *Knill v. Towse* (1889), 2 Q. B. D. 186, 195, Mathew, J.

(*m*) *Ex parte Boyd* (1888), 21 Q. B. D. 264, Esher, M.R.; see 4 Law Quarterly Review, 234; 6 *ib.* 313.

(*n*) 6 Law Quarterly Review, 118.

(*o*) *Ex parte Farrow* (1889), 59 L. J. Q. B. 20, Cave, J.; see 4 Law Quarterly Review, 370.

(*p*) *Duncan v. Dixon* (1890), 43 Ch. D. 211, 215; Pollock on Contracts (7th edit.), 63.

(*q*) *Dazett v. Morgan* (1889), 24 Q. B. D. 48, 51, Field, J.; *Curtis v. Stovin* (1889), 22 Q. B. D. 513, 518, Fry, L.J.

(*r*) In *Cook v. New River Co.* (1889), 14 App. Cas. 698.

construe many Acts of Parliament which were obscurely worded, but I do not think I ever met with one upon which it was more impossible to put a satisfactory construction than the statute with which we have to deal in the present case. If the object had been to render it as difficult of construction as possible, success could hardly have been more complete." Lord Fitzgerald said of the same Act, at p. 703: "It might almost be said to be the result of malicious ingenuity if it had not been probably that the Bill was submitted to a Select Committee, and we may take the contradictions in it as resulting from some effort at compromise in the course of the deliberations of the committee." And Lord Macnaghten called it, at p. 704, a "curiously ill-drawn enactment." And in *Earl Cowley v. Inland Revenue Commissioners*, (1899) App. Cas. 190, 211, Lord Macnaghten, speaking of the Finance Act, 1894, said "the other provisions of the Act which were dragged into the discussion, rather unnecessarily, as it seems to me, are strangely expressed and singularly ill-drawn. But still I do not think that the Act is wholly to blame for the perplexity in which the learned judges below found themselves entangled. They left the broad highway for a narrow bypath, which led in a wrong direction, and presented difficulties which increased at every step." 57 & 58 Vict.  
c. 30.

[In 1877, in his Digest of the Criminal Law, Introduction, p. xix., Sir James Stephen complained of the phraseology of statutes: "The style of the [Criminal Law Consolidation] Acts is no less unfavourable to those who might wish to derive information from them than their length and their arrangement. Acts of Parliament are formed upon the model of deeds, and both deeds and statutes were originally drawn up under the impression that it was necessary that the whole should form one sentence. It is only by virtue of the provision contained in 13 & 14 Vict. c. 21, s. 2 (s), that a full stop can be introduced into an Act of Parliament at all (t). The effect of this rule of style has been to cause the sections of an Act of Parliament to consist of single sentences of enormous length, drawn up, not with a view to communicating information easily to the reader, but to preventing a person bent upon doing so from wilfully misunderstanding them. The consequence is, that sections of Acts of Parliament frequently form sentences of thirty, forty, or fifty lines in length. And the length of these sentences is only one of the objections to them; they are as ill-arranged as they are lengthy" (u).]

(s) Enacting that Acts are to be divided into separate sections; repealed by the Interpretation Act, 1889 (52 & 53 Vict. c. 63), and not re-enacted in the same terms.

(t) [In *Barrow v. Wadkin* (1857), 24 Beav. 330, Romilly, M.R., pointed out that "in the rolls of Parliament the words are never punctuated."] But in the vellum prints substituted for the old Parliament Rolls it is common, if not now invariable, to insert the stops.

(u) As to the length of statutes, Lord Coleridge (in *R. v. Whitfield* (1885),

"The criminal law exhibits, in perhaps a somewhat exaggerated form, all the characteristic defects of the English statute law, because of the very great number and dispersion of the enactments constituting crimes, the almost total absence of definitions explaining the scope of the enactments, and to some extent specimens of all the vices of drafting that have been known from the beginning of English history" (x).

In speaking of sects. 14, 15 of the Offences against the Person Act, 1861 (24 & 25 Vict. c. 100), Stephen, J., said in *R. v. Brown* (1882), 10 Q. B. D. 381, at p. 387: "I cannot help myself thinking that a very much simpler enactment would have suited every purpose, and would have dispensed with these very intricate sections" (y).

In *R. v. Riley*, (1896) 1 Q. B. 309, it became necessary to determine the meaning of the word "instrument" in sect. 38 of the Forgery Act, 1861 (24 & 25 Vict. c. 99). It was pointed out by Hawkins, J., that throughout the statute the Legislature attached no rigid, definite meaning to the word and that it was used in a variety of senses (p. 314), and Vaughan Williams, J., described the Act as a consolidating and amending Act in which "the greater part of the sections are culled from older statutes and put, as it were, on a statutory file. In construing such sections I don't think one ought to let the meaning of one section affect the construction in another unless the sections are plainly connected" (p. 323).

Partial  
injustice  
of these  
criticisms.

To all these strictures it may be answered with Lord Macnaghten, "We are not living in Utopia, where a perfect or ideal language may be had very readily" (*Income Tax Commissioners v. Pemsel*, (1891) App. Cas. 532, 576), and some judges, who have had experience of the difficulty of drafting and passing Acts, have been less severely critical than their brethren. "I am sure," said Lord St. Leonards in *O'Flaherty v. M'Dowell* (1857), 6 H. L. C. 142, at p. 179, "we ought to make great allowance for the framers of Acts of Parliament in these days; nothing is so easy as to pull them to pieces, nothing is so difficult as to construct them properly, as the law now stands." And Jessel, M.R., said in *Att.-Gen. v. Great Western Rail. Co.* (1876), 4 Ch. D. 735, 738: "I am not one of those judges who carp at the language of the Legislature and say that the draftsman might have put it differently." In construing a portion of the Public Health Act, 1875, Stephen, J., said: "It would be unreasonable to suppose that every section of this long

15 Q. B. D. 122, at p. 132) quoted "the *brevis esse laboro obscurus fio*" of Horace.

(x) Mr. R. S. Wright (Parl. Pap. 1875, No. 208, p. 91). See his Reports on Criminal Law (Parl. Pap. 1878, H. L. No. 178); and Lord Thring on Practical Legislation (edit. 1902), p. 9.

(y) This was the view of the draftsman, Mr. Greaves, who makes it clear, in his introduction to the Acts of 1861, that their form was due, not to his own inclination, but to Parliamentary exigencies.

Act, of 343 sections and many schedules, could at the time when it was passed be criticised with all the care which conveyancers might use in a complicated deed. I do not join the censure on the mode in which Acts of Parliament are drawn. Considering their number and length, the defects in them seem to me to be few. But there are occasions on which anyone may doubt whether the attention of the Legislature was directed to the words of a particular clause, and to the question whether they were likely to carry out the intention of the Legislature" (z). In *Winyard v. Toogood* (1882), 10 Q. B. D. 218, 230, he said: "I think the words of the section are quite clear, though possibly they might have been made more decisive if this point had been present to the draftsman." In *Tearle v. Edols* (1888), 13 App. Cas. 183, 185, it was pointed out that though the Crown Lands Act of N.S.W. of 1884 was open to considerable criticism, it must be in candour admitted that the complicated and conflicting interests it had to deal with rendered such legislation extremely difficult (a).

The truth seems to lie in the view of an eminent authority, Sir Erskine May: "No one can doubt that with the multifarious legislation which takes place numerous errors are detected. So far as the judges are concerned, there can be no doubt that when a judge says an Act of Parliament is obscure the obscurity is unquestionable; but we must bear in mind that the only statutes which are brought before the judges for adjudication are the difficult statutes which involve points of obscurity and uncertainty; and I cannot help thinking myself, from reading some of their observations, that the judges look at Acts of Parliament in rather a different spirit from that which characterised the observations of judges in former times. I think they show less reverence to the traditional 'wisdom of Parliament' than was formerly the case with the old authorities" (b).

4. In *Wear River Commissioners v. Adamson* (1877), 2 App. Cas. 743, 756, Lord O'Hagan suggested, as a remedy for the failings of the statute law, the institution of "a department by which Bills, after they have passed committee, might be supervised and put into intelligible and working order, and then submitted for final revision to Parliament before they passed into laws." But it is most unlikely that the Legislature will admit its own incompetence, and delegate to any outside person one of its most important functions. Nevertheless, considerable efforts have been made to remove the defects which have evoked these various criticisms, and to simplify the language and improve the structure of Acts of Parliament, and the labours of the eminent men who had to draft the Indian Codes have reacted upon the aims and methods of English legislation.

Suggested remedies for defective drafting.

(z) *Vinter v. Hind* (1882), 10 Q. B. D. 63, at p. 68.

(a) It took a session of thirteen months to pass the Act.

(b) Sir Erskine May, *Parl. Rep.* 1875, No. 208, p. 4; Thring, "Simplification of the Law," *Quart. Rev.* Jan. 1874.

Sir James Stephen, in the Preface already referred to, Lord Thring (*c*) and Sir Courtenay Ilbert (*d*) are the only persons who have written anything to guide the draftsman of British statutes; but perusal of the evidence taken before, and the reports of, parliamentary committees will indicate the causes, and consequently suggest the remedies, of most of these defects.

In 1856, the Statute Law Commissioners recommended the appointment of an officer or board to revise Bills in their passage through Parliament, somewhat in the same way as judges then dealt with Estate Bills. In consequence of this report an inquiry was held by a Select Committee of the House of Commons, but it came to nothing, owing to the dissolution in that year.

In 1868 the Statute Law Committee was appointed (*e*), which has been labouring at the revision and consolidation of the Public General Statutes.

Since 1869 all Government Bills not relating solely to Scotland and Ireland have been subjected to the revision of the Parliamentary Counsel to the Treasury (*f*). Purely Scotch Bills are drawn in the Scotch Office, under the supervision of the Lord Advocate; and purely Irish Bills in the Irish Office, under the Irish law officers, and the source of the Bills is clearly traceable in the difference of style and method.

A Select Committee was appointed on 4th March, 1875, to consider "whether any and what means might be adopted to improve the manner and language of current legislation." It presented a report (*g*), to which reference will presently be made, but a motion (*h*) that effect should be given to its recommendations was opposed by the Government and defeated. They have, therefore, remained counsels of perfection only, but have considerably influenced the method of drafting public Bills, and are of sufficient importance to merit a *résumé* in this chapter.

Classification  
of defects in  
Acts.

The leading objections, not merely captious, to the style and structure of modern public Acts arise (*i*):

- (1) From the mode in which Bills are prepared and the extent to which they vary, or deal with, previous statutes;
- (2) From the uncertainty which is often caused by inconsistent and ill-considered amendments;
- (3) From want of consolidation where groups of statutes on

(*c*) "Practical Legislation" (edit. 1902), in which are laid down general rules for drafting statutes.

(*d*) Legislative Methods and Forms, 1901.

(*e*) Preface to vol. i. of Revised Statutes (1st edit.), p. v.

(*f*) Parl. Pap. 1875—C—208, p. 9 (Sir Erskine May).

(*g*) 25 June, 1875—C—208.

(*h*) 24 March, 1876.

(*i*) Parl. Pap. 1875—C—208, p. v.



similar subjects are left in a state of great perplexity (*j*); and

- (4) From the absence of a proper classification of the public Acts of Parliament.

Of these, the second depends on inherent difficulties of legislation, and on the political or legal capacity of the Member of Parliament who has the conduct of the Bill.

In the Judicature Act, 1873, the amendments made during its passage through Parliament caused a serious error with respect to the number of the judges and the status of the Chancellor in the High Court, which was corrected by the Act of 1875.

The question of classification is dealt with later at p. 52 *et seq.* But the first and third defects depend to a considerable extent on the draftsman.

The evils arising from imperfections in drafting fall into three classes, according to their origin, viz. :—

Accidental slips (*k*);

Ignorance of the draftsman (*l*); and

More or less intentional obscurities, perplexities, or imperfections, inserted or permitted with a view to facilitate the passage of the Bill through Parliament.

Accidental slips are numerous, and are dealt with in detail in the chapter on "Mistakes," *infra*, Part II. chap. x. 1. Accidental slips.

Ignorance is probably oftener displayed in private members' Bills than in those originating in Government departments. 2. Ignorance.

"It is, however, a very serious matter to hold, that where the main object of a statute is clear, it shall be reduced to a nullity by the draftsman's unskilfulness or ignorance of law. It may be necessary for a Court of justice to come to that conclusion, but their Lordships hold that nothing can justify it except necessity, or the absolute intractability of the language used" (*m*).

Legislation by reference consists in reference to parts of several Acts, some of which are repealed, some amended, and others kept alive subject to the provisions of the amending Act (*n*). 3. Legislation by reference.

This practice is usually the outcome, not of negligence, ignorance, or incapacity in the draftsman, but of the foibles of Parliament, and is excused on the ground that it lessens political difficulties and simplifies the process of getting Bills through committee by lessening the area for amendment (*o*). The same excuse is made for the practice of putting very long

(*j*) *Loc. cit.* p. v., and *infra*, pp. 26, 27, 28.

(*k*) Parl. Pap. 1875—C—208, p. v.

(*l*) See *Salmon v. Duncombe* (1886), 11 App. Cas. 627.

(*m*) *L. c.* p. 634.

(*n*) Perhaps the worst modern instance of this is the Land Transfer Act, 1897 (60 & 61 Vict. c. 65).

(*o*) Thring, *Practical Legislation* (edit. 1902), p. 55.

clauses, elaborately divided into many subdivisions, in what are called fighting Bills (*p*).

Objections  
thereto.

51 & 52 Vict.  
c. 41.

Legislation by reference, which was increasing in 1875, and has since that date still further developed, was described by the committee as making an Act so ambiguous, so obscure (*q*), and so difficult that the judges themselves can hardly assign a meaning to it, and the ordinary citizen cannot understand it without legal advice. With this parliamentary criticism judicial opinion coincides. In *Knill v. Towse* (*r*) the question for decision was, whether upon the construction of the Local Government Act, 1888, s. 75, and the enactments incorporated therein by reference, a county elector could vote in more than one electoral division of the same county. In deciding that he could not, the Court (Lord Coleridge, C.J., and Mathew, J.) said (*s*): "We have arrived at this conclusion with some difficulty, though without doubt. The difficulty has arisen, not from anything inherent in the subject itself, which is simple enough, and might be quite simply treated, but from the mode of legislation now usual in these matters. Sometimes whole Acts of Parliament, sometimes groups of clauses of Acts of Parliament, entirely or partially, sometimes portions of clauses, are incorporated into later Acts, so that the interpreter has to keep under his eye, or, if he can, bear in his mind, large masses of bygone and not always consistent legislation in order to gather the meaning of recent legislation. There is very often the further provision that these earlier statutes are incorporated only so far as they are not inconsistent with the statutes with which they are incorporated; so that you have first to ascertain the meaning of a statute by reference to other statutes, and then to ascertain whether the earlier Acts qualify only, or absolutely contradict, the later ones, a task sometimes of great difficulty, always of great labour—a difficulty and labour, generally speaking, wholly unnecessary. It has, indeed, been suggested (*t*) that to legislate in this fashion, keeping Parliament, in truth, in ignorance of what it is about, is the only way in which at the present day legislation is possible. We know not whether the suggestion is correct; what we do know is that this procedure makes the interpretation of modern Acts of Parliament a very difficult and sometimes doubtful matter. We, the judges, have, perhaps, the least cause to complain. We sit here for the purpose, among other things, of interpreting Acts of Parliament, and bring, or ought to bring, to our task trained and experienced intellects. But in practical matters of every-day concern, such as the possession and exercise of the franchise, it is of the last

(*p*) *E.g.*, the Local Government Act, 1888 (51 & 52 Vict. c. 41).

(*q*) Parl. Rep. 1875—C—208, p. iv.; and see Thring, *Practical Legislation* (edit. 1902), pp. 8, 53, 57.

(*r*) (1889), 24 Q. B. D. 186, affirmed at p. 697.

(*s*) *L. c.* p. 195.

(*t*) See *supra*, p. 25.

importance that the law conferring it, and the rules which govern its exercise, should be easily comprehensible by the mass of the ordinary voters. We are well aware that protest as to past legislation is unavailing, but for the future to call attention to a plain evil may, perhaps, be the first step towards its remedy."

Legislation by reference is also a source of much administrative inconvenience, as will appear from the following illustrations:—

By sect. 34 of the Elementary Education Act, 1876, "all enactments relating to guardians and their officers and expenses and to relief given by guardians shall, subject to the provisions of this Act, apply as if the guardians, including the school attendance committee, were acting under the Acts relating to the relief of the poor, and the Local Government Board may make rules, orders, and regulations accordingly." In interpreting this section, Field, J., in *Reg. v. Eaton* (1881), 8 Q. B. D. 158, at p. 160, said: "It is impossible to exaggerate the inconvenience of this mode of legislation. Instead of the Legislature referring specially to any previous Acts or sections of Acts which it proposes to incorporate in this section, the only incorporation is that of 'all enactments relating to guardians,' rendering it necessary, therefore, for any tribunal required to construe the Act to search through every Act of Parliament in which guardians are referred to, to see whether any particular enactment can be found bearing upon the matter in hand; and inasmuch as there is in this very Act a set of clauses expressly referring to legal proceedings, I am not at all surprised that the parties in the present case, finding no extension of the jurisdiction in those clauses, conceived that it had not been given to them." An extreme instance of the degree to which legislation by reference may be carried is to be found in the provisions of the London Government Act, 1899, as to compensation to existing officers for abolition of office. "Sect. 30, sub-sect. 2, brings in sect. 81, sub-sect. 7, of the Local Government Act, 1894, which in turn brings in sect. 120 of the Local Government Act, 1888. The concluding words of sect. 120, sub-sect. 1, of the Act of 1888, bring in sect. 7 of the Superannuation Act, 1859, which in turn sends the reader back to sect. 2 of the Superannuation Act of 1859" (u).

39 & 40 Vict.  
c. 79.

62 & 63 Vict.  
c. 14.

22 & 23 Vict.  
c. 26.

Legislation by reference may be justifiable where a code exists with properly classified titles, but is unsuited to an undigested statute-book. Its inconvenience is, that it does not make plain to the citizen what may be clear enough to the draftsman who has all the threads of the subject in his hands. But with the rapid progress of consolidation it may be soon possible with-

When legislation by reference is justifiable or excusable.

(u) *Livingstone v. Mayor, &c. of Westminster*, (1904) 2 K. B. 109, 117, Buckley, J.

out causing obscurity (*v*). And there are even now certain cases in which it is beneficial, and saves useless repetition without causing any difficulty of interpretation. Thus the description of an offence created by statute as treason, felony or misdemeanour has long been held to attract the common law incidents attaching to those crimes. And now that summary punishment for minor offences is allowable under many statutes, it is usual and unobjectionable to insert "on conviction in manner provided by the Summary Jurisdiction Acts" (as defined by the Interpretation Act, 1889), as indicating succinctly the procedure to be adopted with relation to the offence.

52 & 53 Vict.  
c. 63, s. 13.

Another mode of legislation by reference, too well established for criticism, is that adopted in the Clauses Acts of 1845 and 1847, whereby a large body of clauses is incorporated into subsequent Acts without repetition (*x*). This method attaches certain statutory incidents to certain classes of corporations subject to modification by special Acts, and is analogous to the method by which the Conveyancing Act of 1881 imports by implication into deeds certain common form clauses. The advantages of this method may be easily overrated, for in every case the special Act to which one of the Clauses Acts applies must be examined to see if any modifications have been effected, and very difficult questions often arise as to the effect of subsequent public legislation upon so complicated a system of combined general and special Acts (*y*).

44 & 45 Vict.  
c. 41.

Aids to the  
draftsman.

5. The labours of the draftsman have been enormously lightened, and his excuses in proportion diminished, by the efforts of the Statute Law Revision Committee, not yet fully utilised by the legal profession, which have resulted in the following improvements in, and aids to the understanding of, the statute law:—

- (1) Expurgation of defunct statutes;
- (2) Issue of the revised editions, showing the effect of the expurgation;
- (3) Preparation of chronological tables of statutes showing the repeals and amendments effected up to the date of the revision;
- (4) The chronological table and alphabetical index to the statutes in force, now brought down to 1905, and re-edited annually; and (*z*)

(*v*) See also *infra*, Part II. chap. vii., "Consolidation and Revision;" see also Parl. Pap. 1875 (C 208), p. 7, Sir E. May; "Simplification of the Law," by Sir H. Thring, Quart. Rev. Jan. 1874; Thring, Practical Legislation (edit. 1902), 54; Ilbert, Legislative Methods and Forms, 111—121.

(*x*) Parl. Pap. 1875 (C 208), p. 4.

(*y*) *E.g.*, of the effect of the railway ticket section, (5), of the Regulation of Railways Act, 1889 (52 & 53 Vict. c. 57), upon the Railways Clauses Act, 1845, c. 20, ss. 104, 105, and the innumerable special railway Acts passed since 1845. *Huffman v. North Staffordshire Rail. Co.*, (1894) 2 Q. B. 821.

(*z*) See Ilbert, Legislative Methods and Forms, 33, 65, 66.

- (5) The table, inserted at the end of each Sessional publication of the statutes, showing the express repeals effected by the legislation of each year, in such a form as to enable the practitioner to correct his copy of statutes to date without much labour.

But except Lord Thring's work, already referred to (*a*), and his article on the simplification of the law (*b*), and Sir Courtenay Ilbert's book on "Legislative Methods and Forms" (*c*), there is no guide by any experienced person available for the unofficial draftsman, and a casual perusal of the statutes of any session will show considerable differences in the methods of drafting Acts, which might advantageously be obliterated: and the result of all that has yet been done in this direction may be summed up in the words of Sir F. Pollock (*d*):—

"Perhaps our progress in the art of legislation is that which we have least cause to be proud of; it is some consolation that this is also the department of legal reform least within the control of lawyers. The Queen has been at divers times pleased to put her trust in divers and many learned persons to see how the statute law could be better ordered. They executed their trust with all diligence, with some dissension, and with infinite shedding of ink and production of carefully written Reports now lurking in the least accessible corners of the Inns of Court libraries. So far the visible result is the Revised Statutes, which some may think barely adequate. Our current Acts of Parliament are certainly better arranged and more concisely (*e*) expressed than they used to be; they are not always more intelligible and less ambiguous" (*f*).

(*a*) Practical Legislation (edit. 1902).

(*b*) Quarterly Review, Jan. 1874.

(*c*) Oxford, 1901.

(*d*) 3 Law Quarterly Review, p. 346.

(*e*) The latest change has arisen, as Bowen, L.J., pointed out in *Ex parte Pratt* (1884), 12 Q. B. D. 334, 340, from "framing Acts on the idea that a code [on some particular subject] is being constructed, and [then] when the present tense is used, it is used, not in relation to time, but as the present tense of logic." This practice is based on the rule of draftsmen that an Act should be treated as always speaking: Ilbert, *l. c.* 248.

(*f*) Even the Arbitration Act, 1889 (52 & 53 Vict. c. 49), contains many obscurities, although it is almost wholly a Consolidation Act.

## CHAPTER III.

## AUTHENTICATION AND CITATION.

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Promulga-  
tion.

1. FORMAL promulgation is not necessary to make an Act of Parliament binding, and many Acts come into force on the date when they receive the royal assent, and some time before an official print is obtainable. But the earlier English statutes were proclaimed by the sheriffs in the county courts (*a*), and exemplifications under the Great Seal were prepared and sent to them for this purpose. Some Acts still in the Statute-book are not found in the records of Parliament, and have been printed from these exemplifications (*b*).

It was also the practice to provide transcripts for the use of the courts at Westminster and the justices of assize (*c*). The *Ordinacio de Conspiratoribus* (33 Edw. 1) concludes: *et ordinatum est quod Justiciarii assignati ad diversas transgressiones et felonias*

(*a*) *R. v. Sutton* (1816), 4 M. & S. 532, 542, Ellenborough, C.J.

(*b*) *E.g.* Stat. de Pistoribus, 1 Rev. Stat. (2nd ed.), p. 76; 7 Edw. 2, forbidding wearing of armour, 1 Rev. Stat. (2nd ed.), p. 63.

(*c*) *E.g.* 10, 11, 14, 18, and 20 Hen. 6, 1 Rev. Stat. (2nd ed.), pp. 217—225.

*in singulis comitatibus Angliæ audiendas et terminandas habeant inde transcriptum (d).*

Precepts were sent to the sheriffs requiring them to read and English Acts. proclaim the statutes sent therewith under seal in the full county court (e), and in each hundred, borough, market-town, &c., and to make transcripts and deliver them to trusty knights of the county, and to every justice of the peace when that office was instituted (f).

The earliest modes of promulgation are exemplified by reference to a statute against the Jews passed in 1271, and preserved only in the *Gesta Abbatum Sti. Albani*. That chronicle (vol. i. 402) contains:

- (1) A letter from Walter, Archbishop of York, then Primate, to the Chief Justice, requesting the full enrolment (*inrotulari integrè et completè*) and speedy publication of the Act, of which the Archbishop gives an abridgment; and
- (2) Letters patent of the King setting out the Act, and commanding its public proclamation and observance *per totam ballivam vestram* (i.e., the liberty of St. Albans).

Similar provisions were made in Scotland. By an Act of Scots Acts. 1425 the Clerk Register was directed to register the statutes, and to give them to the sheriffs for proclamation, and to give copies to anyone who asked and would pay for them.

Till 1581 it seems to have been generally believed in Scotland that a statute did not bind the lieges in any shire until proclaimed at the market-cross of the chief town in the shire. In that year it was enacted that publication and proclamation should be made only at the market-cross of Edinburgh, which should be equivalent to publication in every shire, and that all subjects should be bound by the laws forty days after such publication (g).

In many of the Acts of the Irish Parliament provision was Irish Acts. made for their proclamation, and that no penalty should be incurred until they had been duly proclaimed (h).

Statutes of the United Kingdom are promulgated, not by British Acts. proclamation, but by being printed and circulated among the persons named on what is called the Promulgation List (i).

Those affecting the Channel Islands are promulgated by Acts extend- ing to

(d) Some statutes have been preserved only through transcripts in the Red Books of the Exchequer in Dublin and Westminster.

(e) Cf. the provisions of sect. 7 of the Riot Act, 1 Geo. 1, stat. 2, c. 5, requiring that it be openly read at every quarter sessions and at every leet or law day.

(f) 1 Statt. Realm, Intr. p. lxxxvii.; *R. v. Sutton* (1816), 4 M. & S. 532 (Ellenborough, C.J.).

(g) 1 Statt. Realm, Intr. pp. lxxix., lxxxviii.; Bell, Dict. Law Scot. tit. Statute. Cf. 2 Hen. 5, stat. 1, c. 8.

(h) English Acts intended to bind Ireland were exemplified and sent over for proclamation.

(i) *Vide infra*, p. 32.

Channel  
Islands.

registration in the Royal Courts of the islands (*k*), and in modern Acts it is not uncommon to insert a provision requiring such registration (*l*), but neither the insertion of the clause nor the registration of the Act appear to be conditions precedent to its taking effect in the islands if it is aptly worded (*m*).

In British colonies acquired from the French some proof of registration of French legislative Acts in the colony is required to justify their acceptance as part of the colonial law (*n*).

Or to  
colonies.

The British statutes are circulated in the colonies through the Colonial Office, to which the necessary copies are annually supplied, and the Governments of the chief colonies annually reprint, as an annex to the sessional publication of the colonial statutes, such of the imperial statutes of the year as extend to the colony (*o*).

Sessional  
publication.

The printed promulgation of the statutes in the form of sessional publications began in 1484 in England (*p*) and in 1540 in Scotland, but in Ireland not till the reign of Charles I.

In 1801, by resolution of the House of Commons, the King's printer was authorised and directed to deliver a certain number of copies of each public general statute in accordance with a list appended to the resolution.

This list (*q*) was not based on any definite principle, but continued until 1881 as the basis of the distribution of statutes, with additions made by successive Secretaries of State, also sanctioned without any guiding principle, and without revision by any proper authority, or any provision for responsibility for ensuring the delivery of the statutes at their proper destination.

In 1835 a Committee of the House of Commons considered and reported (*r*) on the regulations for the issue of printed papers, but no action seems to have been taken on the Report.

In 1881 a departmental committee was appointed for the revision of the promulgation list, on the recommendation of the Select Committee appointed by both Houses to consider the First Report of the Stationery Office.

The reformed distribution of the statutes is, however, in the nature, not of a promulgation *urbi et orbi*, but of a supply for administrative and judicial purposes to the officials of the

(*k*) See *In re States of Jersey* (1853), 9 Moore P. C. 185; Anson, *Law and Custom of the Constitution* (4th ed.), vol. ii. p. 257.

(*l*) See 54 & 55 Vict. c. 21, s. 17.

(*m*) Dicey, *Law of the Constitution* (6th ed.), 51, n.; Jenkyns, *British Rule and Jurisdiction Beyond Seas*, 95.

(*n*) *Du Boulay v. Du Boulay* (1869), L. R. 2 P. C. 430.

(*o*) The rules as to the proof of subordinate legislation (statutory rules and bylaws) are dealt with *post*, bk. ii. chap. iii.

(*p*) 1 *Statt. Realm*, Intr. p. lvi.

(*q*) Annexed to the Report of the Committee appointed in 1881 to consider and revise it: *Parl. Pap.* 1883—C—3648, p. 27.

(*r*) *Parl. Pap.* 1835.



Government and of counties and boroughs. And there seems to be no right of public access to any of the statutes so distributed, except where they are in the British Museum or in public libraries. Those who have to administer the law are informed of the Acts of the Legislature, while those who have to obey it have to find out its terms by experience and the daily papers.

A revised edition of the statutes up to 1878 was completed in 1885. It is in eighteen volumes quarto (s), and uniform in size with the quarto edition of the statutes. In 1886 Mr. Howell, M.P., induced the Government to sanction the publication of a second revised edition of the statutes in a cheap form, in order that it might be easily purchasable for the libraries accessible to the working classes, and the edition was in 1900 completed down to the year 1886. This edition is in sixteen octavo volumes, and is uniform with the annual publication of the statutes in octavo, which began in 1887 (t). "There are indeed two classes of persons whose needs the revised edition will not meet, and, it may be added, was not specially designed to meet: the judge who has to decide, the counsel who has to advise on the construction of an obscure enactment, frequently finds it necessary to refer to the language of Acts, sections, or words which have been repealed either as dead law, by Statute Law, Revision Acts, or as superseded law by amending or consolidating Acts. To the historical student the law of the past is even more important than the law of the present. Both these classes of persons require an edition of the statutes containing everything that has been repealed either by way of statute law, revision, or otherwise. But both these classes may derive material assistance from the notes and tables in the revised edition, which show the reason for each repeal or omission" (u).

The statutes revised.

2. Strictly speaking, public statutes need no proof, being "supposed to exist in the memories of all" (x). But this pleasant fiction merely dispenses with formal proof of the existence of the Act, and the necessity of reference to it in pleading. In the term Public Acts are for this purpose included all local and personal Acts which are to be judicially noticed. The enactments making King's printer's copies evidence (y) apply only to private Acts, "not to be judicially noticed," and there is no corresponding provision as to public Acts of the United Kingdom.

Authentication.  
Public Acts.

The presence of any ancient document vouched as a statute on the Parliament Roll or Statute Roll, or its absence therefrom, is not conclusive for or against its legislative validity (z).

(s) The unrevised statutes up to 1878 are in 118 volumes.

(t) The official index to the statutes, now published annually, contains a complete chronological table of all statutes printed as public statutes, (vol. i.) with a statement of repeals and amendments, and (vol. ii.) an index of the subject-matter.

(u) Sir Courtenay Ilbert, *Journ. Soc. Comp. Legislation*, N.S., 1900, p. 78.

(x) *Taylor on Evidence* (10th ed.), §§ 5, 1523.

(y) *Post*, p. 35.

(z) See *The Prince's case* (1605), 8 Co. Rep. 20 b; 4 Ruffhead, Statutes, p. xiii.

The judges have to some extent power to inquire whether a statute is what it purports to be—an Act of Parliament (*a*)—for an Act of Parliament passed by the combined action of its three constituent parts is the only mode in which the will of Parliament can be expressed in a manner binding on the lieges (*b*).

With irregularities or departures from the usage of Parliament the Courts have nothing to do (*c*). They cannot review or correct, or in any way deal with them. But though a departure from the usage of Parliament during the progress of a Bill will not vitiate a statute, informalities in the final agreement of both Houses have been treated as if they would affect its validity. No decision of a court of law upon the question has ever been obtained, but doubts have arisen there (*d*); and in two modern cases Parliament has thought it advisable to correct by law irregularities of this description.

In May's Parliamentary Practice (10th ed.), p. 488, three questions which might arise are propounded:—

- (1) Will the royal assent cure all prior irregularities in the same way as the passing of a Bill in the Lords would preclude inquiry as to informalities in any previous stage?
- (2) Is the indorsement on the Bill recording the assent of King, Lords, and Commons conclusive evidence of the fact? (*e*) or
- (3) May the Journals of either House be permitted to contradict it?

It is submitted that the Courts, in an ordinary case, would regard the existence of an enrolled copy among the records of Parliament (or Chancery), purporting to be duly assented to, as conclusive out of Parliament, and would decline to enter upon any inquiry into the contents of the Journals or into the usages or resolutions of either House, except so far as they purport to alter the common or statute law (*f*).

Once satisfied of the authenticity of an Act, the judges would be bound to take judicial notice of its contents, and as it is not

(*a*) *Loc. cit.* 18 *a*.

(*b*) Dicey, *Law of the Constitution* (8th ed.), 351.

(*c*) In *Manigault v. Springs* (1905), 199 U. S. 473, it was held that a special Act passed by a State Legislature could not be challenged as invalid because it had not complied with certain provisions as to notices in publications required by the Revised Statutes of the State as to such Acts, and resembling those comprised in our Standing Orders as to Private Bills. The Revised Statutes were not part of the Constitution, and could be repealed, amended, or disregarded by the State Legislature.

(*d*) *Fylkington's case* (1450), Y. B. 33 Hen. 6; and see per Hale, C.J., in *College of Physicians v. Cooper* (1675), 3 Keb. 587, and Coke, in *The Prince's case* (1605), 8 Co. Rep. 18 *a*.

(*e*) See Anson, *Law and Custom of the Constitution* (4th ed.), vol. i. p. 303.

(*f*) *Stoddale v. Hansard* (1837), 3 St. Tr. N. S. 723, 850. The Court, in *Bradlaugh v. Gosset* (1884), 12 Q. B. D. 271, declined to go behind a resolution of the House of Commons as to its own internal management.

permissible to refer to debates in Parliament in explanation of the meaning of an Act, so also it would seem no part of the judicial office to scrutinise the contents of the Journals of either House or the drafts of Bills to see whether the Act in question had properly received the assent of the Legislature.

If a serious question were raised as to the validity of an Act, no doubt the judges would adjourn the proceeding in which it arose until Parliament had an opportunity of settling the question by a fresh Act, as was done in the case in 1450 referred to in May (Pr. of Parl. (10th ed.) p. 488).

If any reason arises for doubting the accuracy of the print of any statute, reference may be had to the Chancery enrolment as to statutes passed prior to 1849, and also, as to Acts between 1487 and 1849, to the original Acts preserved in the Parliament Office. Apparently this is to be done by the Court itself with reference to public general Acts, or any local or private Act directed to be judicially noticed as a public Act (*g*), and it does not seem to be the duty of the parties to examine or to produce an examined copy of the entry on the Chancery Roll or of the vellum print. The records of Parliament are open (for a fee) to all who desire to collate the King's printer's copy with the Parliament Roll or original Act or print on vellum, and it is in accordance with ordinary judicial practice to require the person who disputes the accuracy of an official document to make good his assertion.

Private Acts printed and for sale are proved by production of a copy purporting to be printed by the King's printers, or otherwise under His Majesty's authority, or under the superintendence or authority of H.M.'s Stationery Office (*h*). Private Acts.

Private Acts not printed for sale (*i*) are proved by an exemplification (*h*), transcript (*l*), or an examined or certified copy of the original from the Record Office or the Clerk of the Parliaments. The old practice, where a private Act had to be proved, was to obtain a certification of the Act out of Chancery. The fact of its enrolment there justified the assumption that the royal assent had been given. When doubt arose as to the cor-

(*g*) *Beaumont v. Mountain* (1834), 10 Bing. 403, Tindal, C.J.

(*h*) 8 & 9 Vict. c. 113, s. 3; 45 & 46 Vict. c. 9, s. 2.

(*i*) Collections of most of these Acts are available in the libraries of the Inns of Court, and the Parliament Roll may be inspected for a fee of 5s. Indices of Private Acts exist: (1727—1812) Bramwell's Analytical Table; (1801—1899) Official Index; and see the tables at the end of the annual volumes of Public General Statutes. A certain number of Acts published with the Public General Statutes are indexed in the Index to Local and Personal Acts, and are not included in the Index to the Statutes. See that book (ed. 1905), vol. ii. p. 1280.

(*h*) A copy made from the Chancery Roll—(1) for the safe custody, proclaiming, or recording of the Act; or (2) for affording authentic evidence of its tenor. It was examined with the record, and certified by the old Masters in Chancery: 1 Statt. Realm, Intr. p. xxxv.

(*l*) Transcripts by writ were copies sent into Chancery, in answer to the King's writ of *certiorari* or mandate, to the officers who had the custody of the original.

rectness of the enrolment in Chancery, that Court issued a *certiorari* to the Clerk of the Parliaments, who made a return by exemplifying the Act from the records in his custody (*m*).

Until the Judicature Acts the Common Law Courts could not send to the Clerk of the Parliaments (*n*). But at the present time, when any doubt arises on any statute, the High Court requires the attendance of an officer from the Parliament Office with the original Act, engrossed or printed on vellum as the case may be, and the formalities of *certiorari* and return are superseded by collation of the original Act with the King's printer's copy circulated for public use, or, in the case of statutes not printed for circulation, by reference to the original Act, which is now always printed.

Acts prior to the union with Scotland and Ireland.

Acts of the English and British Parliament are proved in Ireland and Acts of the Irish Parliament are proved in Great Britain by production of a copy printed by the duly authorised printer (41 Geo. 3, c. 90, s. 9).

There is no statutory provision for the proof in Scotland of Acts of the English Parliament, nor for the proof of Scots Acts in England or Ireland (*o*).

Colonial statutes.

Statutes and ordinances of British possessions abroad are judicially noticed in the possession to which they belong, and elsewhere in the empire are treated as foreign law, but may be proved under sect. 6 of the Colonial Laws Validity Act, 1865, by the certificate of the proper officer of the legislature of the colony that the document attached thereto is a true copy of the statute or ordinance. This statute does not apply to the Channel Islands, the Isle of Man, or British India (sect. 1).

28 & 29 Vict. c. 63.

U.S. rule as to judicial inquiry into authenticity.

The Supreme Court of the United States takes judicial notice of the statutes of all the States (*p*).

The principles to be adopted by the judges, in case of any doubt arising, are thus stated by Fuller, C.J., in *Re Duncan* (1890), 139 U. S. at p. 457, in a manner which seems equally applicable to British Acts:—

“On general principles, the question as to the existence of a law is a judicial one, and must be so regarded by the [Federal] Courts of the United States. This subject was fully discussed in *Gardner v. Collector* [1867, 6 Wall. U. S. 499 (*q*)]. After examining the authorities, the Court in that case lays down the general conclusion (‘on principle as well as authority’) that ‘whenever a question arises in a Court of law of the existence of a statute, of the time when it took effect, or of the precise

(*m*) *College of Physicians v. Cooper* (1675), 3 Keb. 587, Hale, C.J.

(*n*) See 1 *Statt. Realm*, Intr. p. lxix.

(*o*) An official revised edition of the Scots Acts still in force is in course of preparation.

(*p*) *Gormley v. Bunyan* (1890), 139 U. S. 623, at p. 635 (Lamar, J.). In *Boyd v. U. S.* (1891), 143 U. S. 649, notes, the law of the States of the Union is given.

(*q*) Upon the existence of a Federal Act, said to have been approved in 1861. The case deals with the early English authorities on the subject.

terms of a statute, the judges who are called upon to decide it have a right to resort to any source of information which, in its nature, is capable of conveying to the judicial mind a clear and satisfactory answer to such question, always seeking first for that which in its nature is most appropriate, unless the positive law has enacted a different rule." Of course, any particular State [of the Union] may by its constitution and laws prescribe what shall be conclusive evidence of the existence or non-existence of a statute; but the question of such existence or non-existence being a judicial one in its nature, the mode of ascertaining and using that evidence must rest in the sound discretion of the Court on which the duty in any particular case is imposed" (v). It has also been laid down in the United States that "a statute duly certified is presumed to have been duly passed until the contrary appears, a presumption arising in favour of the law as printed by authority, and in a higher degree of the original on file in the proper repository" (s), and that "the Court, for the purpose of informing itself of the existence or terms of a statute, cannot look beyond the enrolled Act certified to by those officers who are charged by the Constitution with the duty of certifying" (t).

Presumption  
of accuracy of  
copies printed  
by authority  
or certified.

The question has often been considered in the United States whether the journals of the Legislature can be used to impeach a completely enrolled Act duly recorded and authenticated. A list of the decisions in the various constituent States is printed in *Field v. Clark* (1891), 143 U. S. at 661—666. In that case it was laid down, in a case arising on the McKinley Tariff Act, that the signing by the Speaker of the House of Representatives and the President of the Senate in open session of an enrolled bill is an official attestation by the two Houses of such a bill as one that has passed Congress, and when the bill thus attested receives the approval of the President and is deposited in the Department of State according to law, its authentication as a bill that has passed Congress is complete and unimpeachable, and the journals of either House may not be used to show that an Act so authenticated, approved and deposited did not pass in the precise form in which it was so signed and approved.

In substance, therefore, the law of the two countries is the same, allowing for the particular exigencies of the written constitutions of the Union and the States, and the consequent

(v) The Federal Courts adopt the adjudications of the State Courts as to the authenticity of State Acts and the evidence by which they may be impeached, but are free under their own jurisdiction to pronounce on the validity of the enactments. The Privy Council would doubtless follow a somewhat similar rule, but with greater liberty on the question of authentication, and is constitutionally competent to declare invalid colonial Acts if *ultra vires*, and to reverse colonial decisions if erroneous.

(s) *Re Duncan* (1890), 139 U. S. at p. 457 (Fuller, C.J.).

(t) *L. c.* at p. 459.

capacity of the Courts to pronounce on the validity of legislative enactments. And it seems likely that our Courts would also adopt the American rule that: "Wherever a suit comes to issue, whether in the Court below or in the higher tribunal, an objection resting upon the failure of the Legislature to comply with the provisions of the constitution should be so presented that the adverse party may have opportunity to controvert the allegations, and to prove by the record due conformity with the constitutional requirements" (u).

Inquiry as to  
sufficiency of  
words of  
assent.

The only parts of a public statute which may be traversed or contested to any extent in an English court of justice are—

- (1) The words of assent, and
- (2) The preamble and recitals.

These alone contain any allegations of fact, the rest of the Act expressing the will of the Legislature.

The consent of King, Lords, and Commons being essential to constitute an Act of Parliament (x), any doubt as to the giving of this consent may be investigated by the Courts, and is the only question as to the validity of the Act which, under our constitution, the Courts may investigate.

The proper mode of determining any doubt of this kind would be by certificate from the Speakers of both Houses of Parliament, or by proof that the impugned statute was duly enrolled in Parliament, or that the original was duly indorsed with the fact and date of the royal assent. But it is more than likely that the judges, as to modern Acts, would decline to go behind the Parliament Roll or the King's printer's copies of Acts officially supplied, unless they received official intimation from some branch of the Legislature that the necessary consents had not been given (y).

18 Edw. 1,  
c. 1.

The earliest rule on the subject is given by Coke (on Littleton, 98 b) with reference to the statute of *Quia Emptores*: "Secondly, it is (amongst other Acts of Parliament) entered into the Parliament Roll, and therefore shall be intended to be ordained by the King by the consent of the Lords and Commons in that Parliament assembled. Thirdly, it is a general law whereof the judges may take knowledge, and therefore it is to be determined by them whether it is a statute or not."

Evidence of the royal assent, other than the words of enactment, was never required as to the earlier statutes, public or private [per Hale, C.J., in *College of Physicians v. Cooper* (1675), 3 Keb. 587], and from 3 Edw. 1 to Hen. 6 there is no mention

(u) *In re Duncan* (1890), 139 U. S. at p. 457, citing *People v. Supervisors of Chenango* (1853), 8 N. Y. (4 Selden), 317, 325.

(x) See *ante*, p. 33; *post*, pp. 52, 53; *The Prince's case* (1605), 8 Co. Rep. 18; *College of Physicians v. Cooper* (1675), 3 Keb. 587 (Hale, C.J.). By this rule fell all the ordinances of the Long Parliament.

(y) See May, *Parl. Pr.* (10th ed.), 486 *et seq.*; and as to the law in the U. S., see *Field v. Clark* (1891), 143 U. S. 649.

of the royal assent on public or private Acts other than the words of enactment.

The importance of this question with reference to old Acts lay in the fact that, as the Act was in the form of a petition, unless it was indorsed *le roy le veult* or *soit fait come il est désiré*, the sole evidence of royal assent was the appearance of the Bill on record.

Since 1793 it is submitted that such evidence may in some cases be necessary, for the commencement of an Act is now regulated by the indorsed date of royal assent, and not by the commencement of the session, and that in the absence of such indorsement by the Clerk of the Parliaments no document can be treated as an Act without further inquiry as to the fact and date of assent. But the judges take judicial knowledge of the order and course of proceedings in Parliament with reference to statutes (z).

Assent is now usually given by Royal Commission, to which are scheduled the Bills assented to, specified by their short titles.

The preamble precedes the words of enactment, and is in the nature of a recital of the facts operative on the mind of the law-giver in proceeding to enact.

Inquiry as to truth of preambles and recitals.

The validity or accuracy of its recitals can never come in question (a), nor can it be denied that they induced the Legislature to legislate; but it does not therefore follow that the facts stated are true, nor that they are to be judicially accepted as evidence conclusive against all the world or any individual.

In *R. v. Houghton* (1853), 6 Cox, C. C. 101; 1 E. & B. 501, a recital in a local Act (59 Geo. 3, c. xxii.) stating that a particular road was in parish A was admitted as evidence of the fact. On appeal Lord Campbell said: "A mere recital in an Act of Parliament, either of fact or law, is not conclusive, and we are at liberty to consider the fact as law different from the recital." And in *Earl of Carnarvon v. Villebois* (1844), 13 M. & W. 313, in order to prove the existence of certain rights of free warren and free chase against copyholders, it was allowed to put in an Inclosure Act of 23 Geo. 3, which contained a proviso that nothing should prejudice the rights of the lord of the manor to the rights of free warren and free chase, "as being," as Parke, B., put it, "some recognition of the right upon a subject-matter upon which evidence of reputation would be receivable" (b).

It has been contended, on the one hand, that recitals in Acts of Parliament are not evidence of facts (c), but only of the

(z) See Roscoe, *Nisi Prius* (17th ed.), by Powell, p. 80; Taylor, *Evidence* (10th ed.), s. 84.

(a) *Labrador Co. v. Reg.*, (1893) App. Cas. 104.

(b) See Wilberforce, *Statute Law*, p. 15.

(c) As to false recitals, see argument of Serjeant Manning in *Baron de Bode v. R.* (1845), 3 H. L. C. 449, at p. 460; 6 St. Tr. N. S. 237.

opinion of the Legislature, or of representations made to it and believed by it. On the other hand, it is urged that recitals of facts contained in a preamble amount to findings with respect to those facts in the High Court of Parliament, and conclusive upon all inferior Courts and all subjects, being in the nature of *res judicata*. But thus far the Courts have steered a middle course between these two opinions.

12 & 13 Vict.  
c. 14. In *Headland v. Coster*, (1905) 1 K. B. 219, 231, Collins, M.R., referring to a recital in the Distress for Rates Act, 1849: "That recital is certainly not altogether true. . . . In that limited sense the recital may be looked upon as true, but it is also possible that it may be a mis-recital. Such mis-recitals are not absolutely unknown even in Acts which have been framed by skilled and careful draftsmen. In any case, however, the argument for the plaintiff seems to me so overwhelming that even if the adoption of it would involve that there was a mis-recital in the Act of 1849, I should feel bound to give effect to it" (*d*).

25 Edw. 3,  
c. 2. In *R. v. Hardy* (1794), 24 St. Tr. at p. 204, in directing a grand jury, Eyre, C.J., in speaking of the recitals in the Treason Act, 1351, said: "I presume I hardly need give you this caution, that though it has expressly been declared by the highest authority that there do exist in this country men capable of meditating the destruction of the constitution under which we live, that declaration being extra-judicial, is not a ground upon which you ought to proceed." But Bayley, J., in *R. v. Sutton* (1816), 4 M. & S. 532, 549: "The preambles to the two Acts of Parliament, I think, are still more free from objection than the proclamation, and they assume as facts that outrages did exist. When we consider in what manner an Act of Parliament is passed, and that it is a public proceeding (*e*) in all its stages, and challenges a public inquiry, and when passed is in contemplation of law the act of the whole body (*f*), it seems to me that its recital must be taken as admissible evidence, and in this case was confirmatory evidence;" and in the same case Lord Ellenborough (*g*) said: "Next it is objected that the Acts of Parliament were not evidence. For what purpose, then, are the judges bound to take judicial notice of public Acts of Parliament but in order that they may have a knowledge of them themselves and communicate it to others? The judge is bound, not only to take judicial notice of their contents himself, but to state it to the jury; for if he is not to state the same, for what purpose is he to take notice of them? . . . Public Acts of Parliament are binding upon every subject, because every subject is in judgment of law privy to the making of them, and

(*d*) This decision was affirmed on appeal (1906), not yet reported.

(*e*) *I.e.* a proceeding by or on behalf of the public.

(*f*) *I.e.* of the nation.

(*g*) 4 M. & S. p. 542.



therefore supposed to know them, and formerly the usage was for the sheriff to proclaim them at his county court; and yet what every subject is supposed to know, and what the judge is bound judicially to take notice of, it is said the jury cannot advert to, for if this evidence was inadmissible it must be because the jury could not be charged with it." The reasoning of Lord Ellenborough and Bayley, J., leads further than they followed it. An Act of Parliament is not evidence in the ordinary sense of the term, but a declaration of the will of the Legislature on the subject to which it relates. Words of enactment are clearly separable from the motives or beliefs which lead to legislation. So far as the enactment is concerned, it is "*sic volo sic jubeo, stet pro ratione voluntas.*" But so far as a preamble recites facts *in pais*, other considerations apply. It is incontrovertible in law that the recitals motivated the enactment, but it does not therefore follow that the recitals are true or conclusive in fact upon individuals: for the omnipotence of Parliament does not extend to facts, nor imply its infallibility (*h*). Yet if judge or jury were free to controvert the motives of an enactment, and its recitals were to be merely admissible in evidence, it might be contended that to deal with them otherwise than as a conclusive decision upon a question of fact would be either—

- (a) Not to take judicial notice of the recitals; or
- (b) To decide that the statute, being based on false recitals, was not binding.

The *via media* between these two alternatives is to regard the preamble as conclusive in so far as it elucidates the intention of Parliament expressed in the enacting part, but as *prima facie* evidence only of the matters of fact, in the same way as recitals in old deeds are by the Vendor and Purchaser Act, 1874.

As the oldest Acts were in the form of a grant with recitals, it was always conceivable that the King might be deceived in his grant, but the *onus* of proof was on the person who challenged the correctness of the recitals; and it seems to be now settled that no Court can impugn the validity of a statute on such a ground. In any case, in this respect recitals are in a different position from the enacting part, which is conclusive even if based on erroneous inferences as to fact or law. In *Labrador Co. v. Reg.*, (1893) App. Cas. 104, a question was raised whether the recognition by the Legislature of Canada (19 Vict. c. 3) of a certain *seigneurie* as existing must be judicially accepted, or could be overridden by evidence of mistake. Lord Hannen, in deliver-

37 & 38 Vict.  
c. 78, s. 2.

(*h*) In *R. v. Greene* (1837), 6 A. & E. 548, evidence was admitted to show that a place described as an existing borough in the schedule to the Municipal Corporations Act, 1835 (5 & 6 Will. 4, c. 76), was not an existing borough. In the case of private legislation, the truth of the preamble is now inquired into, and the Bill is not allowed to proceed unless the preamble is proved. See May, *Parl. Practice* (10th ed.), 773; Taylor, *Evidence* (10th ed.), s. 1660.

ing the opinion of the Judicial Committee, said: "Even if it could be proved that the Legislature was deceived, it would not be competent for a Court of law to disregard its enactments. If a mistake has been made, the Legislature alone can correct it. The Act of Parliament has declared that there was a *seigneurie* of Mingan, and that thenceforward its tenure shall be changed unto that of *franc alleu*. The Courts of law cannot sit in judgment on the Legislature, but must obey and give effect to its determination."

Limits of  
judicial  
notice.

The Courts are occasionally asked to infer the existence of a statute which is not of record in order to give effect to the judicial rule of endeavouring to find a legal origin for a well-established usage (*i*). This is an attempt to extend to statutes the presumption as to lost grants, and seems to be based on the original identity in form between royal charters and statutes. The most recent instance of this contention is in *Chilton v. Corporation of London* (1878), 7 Ch. D. 735, where the inhabitants of a parish claimed, by custom, a right to lop wood within a manor. Jessel, M.R., there said (at p. 740): "But then it is said, though the right is not known to the common law, it may be created by Act of Parliament, and the judge is bound to assume, when not disputed by the pleadings, that it has been so created. The answer to that is simply, that the judge is theoretically bound to take notice of all Acts of Parliament; that is, he is bound theoretically to know the contents of them, and to be aware that there is no such Act of Parliament. I say 'theoretically,' but practically the judge requires attention to be called to the particular statute, and the clauses and sections of it that bear on the matter in hand. But he is bound to take judicial notice of all Acts of Parliament; and even on demurrer, which is our strictest form of pleading, any Act of Parliament can be taken notice of without being pleaded on either side." But it is submitted that this statement of the law is too wide.

The duty of the judges to take judicial notice of a statute is confined to public Acts (*k*). Private Acts must be both pleaded and proved, unless by a special clause in the Act in question or by or under Brougham's Act (13 & 14 Vict. c. 21), s. 7, or the Interpretation Act, 1889 (52 & 53 Vict. c. 63), s. 9, judicial notice is to be taken of them (*l*).

Text and  
editions.

3. When the authenticity and validity of a statute are ascertained, the next questions arising upon its construction are the correctness of the text vouched and the mode of solving any doubts arising on that head. In case of doubt as to the text of a statute which is to be judicially noticed, it is for the judges to

(*i*) *Phillips v. Halliday* (1889), 23 Q. B. D. 48, Bowen, L.J., affirmed, (1891) App. Cas. 228; and see *Saltash Corporation v. Goodman* (1883), 7 App. Cas. 633.  
(*k*) Co. Litt. 98 b.

(*l*) See Taylor on Evidence (10th ed.), s. 1523; Roscoe, Nisi Prius (17th ed.), pp. 104, 105.

refer to the record or document containing the most authentic copy of the statute. From this point of view new statutes fall into four classes—

- (1) Statutes passed prior to the invention of printing which are of record;
- (2) Like statutes not of record;
- (3) Statutes passed since the invention of printing, printed and circulated by authority; and
- (4) Like statutes unprinted, or printed and not so circulated.

Most Acts between 1278 and 1487 appear on the Statute Roll preserved in the Tower, which is a record of Chancery on which most of the statutes of the period were entered when drawn up in form for proclamation and publication (*m*). There is a gap from 8 Hen. 6 to 23 Hen. 6, owing to the Wars of the Roses. It would seem that the roll was made up till 4 Hen. 7. The last statute preserved in the Statute Roll form is also the first of which no Latin or French version is extant (*n*). Old Acts of record.

Coke and Hale say that some of the earlier statutes are not of record (*o*); but subsequent research has shown them to be in error as to most of the Acts and ordinances which they specify as unrecorded. But unrecorded statutes are from time to time discovered in reprinting documents in the Record Office (*p*), but those found are not of any practical value or present legislative validity. Statutes not of record.

Whether of record or not, a statute is equally binding if its authenticity is once ascertained (*q*), and evidence of its promulgation is, as already said, not required.

Acts from 1487 to 1849, with few exceptions (*r*), are among the original Acts in the custody of the Clerk of the Parliaments, which show the original text as engrossed in black letter (*s*), with all subsequent additions and erasures, and indorsed with the signatures of the Clerks of both Houses. Of this a transcript, which was much more legible than the original, was made and certified by the Clerk of the Parliaments, and sent to the Rolls House. The original Acts.

Since 1849 two prints on vellum of every Act, public, local, or private, are prepared. One is retained by the Clerk of the Parliaments, with a certificate of royal assent. The other, similar in every respect, and bearing a like certificate, is sent to the Rolls House.

(*m*) 1 Stat. Realm, Intr. p. xxxiv.

(*n*) 1 Rev. Stat. (2nd ed.), p. 235.

(*o*) Ruffhead's Stat. vol. i. Pref. p. xxiv.; Hale, Hist. C. L. ch. 1; *College of Physicians v. Cooper* (1675), 3 Keb. 587; Stat. Realm, vol. i. Intr. p. xxxii.

(*p*) *E.g.* a statute forbidding Jews to hold land, in *Gesta Abbatum Sti. Albani*, vol. i. pp. 402—404, 523.

(*q*) The documents in which they are preserved usually contain evidence of promulgation.

(*r*) *Vide* 1 Cliff. 328. Some of these Acts have never been printed.

(*s*) 1 Cliff. 322.

The original Acts retained by the Clerk of the Parliaments are numbered consecutively, regardless of distinction between public and other Acts. The copies sent to the Rolls House are numbered in three series, in accordance with the classification adopted in the sessional publication of the statutes.

Inquiry into the printed editions of the statutes may be material—

- (1) As to the authenticity of an Act;
- (2) Its proof in judicial proceedings; or
- (3) The accuracy of the text vouched.

Record Com-  
mission  
edition.

For ordinary purposes as to statutes prior to 1713 reference is usually made to the folio edition of the Statutes of the Realm published by the Record Commission, the text of which is adopted in the revised editions of the statutes (*t*).

It also contains (Intr. p. xlix.) a *catalogue raisonné* of all editions published by public or private venture prior to 1811, all of which it has for practical purposes superseded. The origin of the edition and the *modus operandi* of the editors deserve brief notice.

In 1800 the House of Commons presented an address to the Crown asking that directions should be given for the better preservation, arrangement, and more convenient use of the public records of the kingdom (*u*). In consequence, a Royal Commission was appointed in the same year, whose first resolution was that a complete and authentic collection of the statutes of the realm be prepared, including every law, as well those repealed or expired as those now in force, with a chronological list of them and a table of their principal matters. As a result of the labours of this Commission, the statutes of the realm up to 1713 were published between 1811 and 1828.

This edition contains—

- (1) All instruments contained in any general collection of statutes published prior to that of Serjeant Hawkins in 1735;
- (2) Such matters of a public nature purporting to be statutes as were introduced by him or subsequent editors, particularly Cay and Ruffhead, whose edition was published in 1762—1764; and
- (3) Such new matters of the like nature as could be taken from sources of authority not to be controverted—viz., statute rolls, enrolments of Acts, exemplifications, transcripts by writ, and original Acts.

Acts since  
1713.

Of all public and many private Acts since 1713 King's printer's copies are obtainable. They used to be printed in

(*t*) 1 Statt. Realm, Intr. p. xxxv. The sources from which the statutes printed are derived, and the *variae lectiones*, are indicated in these editions.

(*u*) 1 Statt. Realm, Intr. p. viii.

three forms—folio, quarto and octavo. A Committee of the House of Commons in 1835 recommended discontinuance of the folio and quarto editions, but the folio was not dropped till 1881, and the quarto is still published.

Till 1886 Acts of Parliament, when printed, subject to the promulgation list, became the private property of the King's printers, who had the monopoly of their publication, and did not act merely as agents of the Crown. But in 1881 a Select Committee of both Houses recommended that this arrangement should be discontinued, and that Acts of Parliament should be printed and sold under the same regulations as other parliamentary papers (*x*).

By the Documentary Evidence Act, 1882, the Stationery Office was put into the position of the King's printer with reference to public documents which are by statute evidence, or conclusive evidence, if purporting to be printed by the King's printer. 45 Vict. c. 9.

Since 1886 statutes and all parliamentary papers and public documents emanating from the different departments of Government are printed for and issued by the Stationery Office, and letters patent have been issued to the controller of the office constituting him the King's printer.

Doubts as to the correctness of any of these received editions can only be solved by reference to the original documents referred to above. In no case is the official print made conclusive evidence as to the text of a statute (*y*). But the revised editions may now be said to have attained the position of an authorised version of the statutes, by the effect of the Interpretation Act, 1889 (52 & 53 Vict. c. 63), s. 35 (2) (*z*). The revised statutes.

Where any Act passed after December 31, 1889, contains a reference to any Act by its short title or regnal year, the reference, unless a contrary intention appears, is to be read as referring, in the case of statutes included in any revised edition of the statutes purporting to be printed by authority, to that edition, and in the case of Acts not so included, and passed before 1714 (1 Geo. 1), to the edition prepared under the direction of the Record Commission, and in other cases to the copies of the statutes purporting to be printed by the King's printer, or under the superintendence or authority of H.M.'s Stationery Office (*a*). This enactment only authorises the version for parliamentary purposes, such as recital or repeal, and leaves untouched the question of the accuracy of the text or the validity of the

(*x*) Parl. Pap. 1831, No. 356.

(*y*) The first print of the Education Act, 1891 (54 & 55 Vict. c. 56), was withdrawn, as not embodying the tenor of the Act as ultimately assented to by Parliament. See Chitty's Statutes (5th ed.), vol. iv. tit. Education, p. 80, *n*.

(*z*) Provisions to the like effect used to be inserted at the head of the repeal schedules annexed to Statute Law Revision Acts.

(*a*) See Parl. Pap. 1881, No. 356, p. vii., and Documentary Evidence Act, 1882 (45 Vict. c. 9).

statutes. But in substance it constitutes the editions named as part of the official text of the Statute-book.

Scots Acts.

It was the exclusive privilege and official duty of the Lord Clerk Register to enter the Acts of the Scottish Parliament in the proper record, and to furnish copies to sheriffs, magistrates of burghs, and such as might demand them.

Scots Acts were first printed in 1541 by virtue of an ordinance of James V., which directed the Clerk Register to make authentic copies, so far as concerned the common weal (*i.e.* except of private Acts), under his hand, to be printed by what printer he chose.

In 1592 and 1607 the Scots Parliament directed the printing and publication of the editions of Scots Acts prepared by Sir John Skene, Clerk Register (*b*), which are received as the authorised text.

In pursuance of a resolution of the Record Commission in 1807 a folio edition of the Scots Acts was prepared on the same lines as the Statutes of the Realm. Vols. 2—11, containing the statutes for 1424—1707, were published in the year 1814, and vol. 1, containing earlier statutes, was published in 1844. A revised edition of the Ante-Union Acts is in course of preparation (*c*).

There is no statutory provision for the proof in English legal proceedings of any Act of the Scots Parliament.

Irish Acts.

The Irish statutes were printed in 1765 in folio in pursuance of the order of the Lord-Lieutenant (the Earl of Halifax), to give effect to a resolution of the Irish House of Lords that an edition of the statutes should be prepared under the inspection of the Lord Chancellor and judges. This edition has always been accepted in the courts in Ireland (*d*). But reference can now also be made to the revised edition of the statutes of Ireland (1310—1800) published "by authority" in 1888 (*e*).

Acts of the Irish Parliament may be proved in legal proceedings in Great Britain by producing a copy purporting to have been printed by the official printer (41 Geo. 3, c. 90, s. 9).

Language.

4. The statutes were recorded in Latin or Norman French until the death of Richard III. In the first Parliaments of Henry VII. the practice seems to have continued, but no printed edition in French has been discovered. From 1488 (4 Hen. 7) the Statute Roll was no longer made up in the ancient form (*f*), and the statutes have been published in English only.

The English translations published in the revised statutes are not always accurate, and have no legislative validity. The

(*b*) 1 *Statt. Realm*, Intr. pp. xliii., lxxix.

(*c*) Ilbert, *Legislative Methods and Forms*, p. 26. Its publication will be accelerated by the passing of the Statute Law Revision (Scotland) Act, 1906.

(*d*) 1 *Statt. Realm*, Intr. p. lxxxv.

(*e*) *Rev. Statt. Ireland*, Pref. p. v.

(*f*) 1 *Rev. Statt.* (2nd ed.), p. 228, *n*.

source from which each is derived is stated in the Statutes of the Realm and Statutes Revised.

5. It is laid down by Sir John Comyns (Dig. tit. Action upon Statute, G, H, I) that in both criminal and civil pleadings upon a statute the statute must be recited, except where the statute merely extends a right or remedy already existing at common law. Pleading statutes.

Since 1875, when the Judicature Acts came into force, this rule no longer holds good in its entirety; for, according to the modern rule of civil pleading, facts only are to be stated (*g*). Nothing need be stated of which the Courts will take judicial notice. Consequently, public general Acts need not be specially pleaded in the High Court, save in a few cases—viz., that of the Statutes of Frauds and Limitations (*h*), those by which a defendant was permitted to plead the general issue (*i*), and statutes rendering illegal any claim made. These exceptions appear to be based on judicial hostility to the statutes in question. In certain actions of debt upon statutes it appears still to be necessary to specify the Act upon which the action is based (*e.g.* 25 Geo. 2, c. 36, s. 11). But this kind of action is quasi-criminal upon a penal statute (*k*). In civil proceedings.

It appears to be still expedient to plead an Act, private, local, or personal in its nature, even if it contains a clause requiring judicial notice to be taken of it; and apparently also any enactment vouched as an exception to the general law.

In proceedings for an offence, including actions upon a penal statute, it appears to be still necessary to state the offence substantially in the words of the statute. As to indictable offences, this is the common law rule (*l*); with reference to offences punishable on summary conviction, the common law rule is adopted with modifications by the Summary Jurisdiction Act, 1879, s. 45. In criminal proceedings.

6. Reference by title, year, chapter, or section is neither necessary, nor usual, nor prudent, and the facilities for amendment of immaterial errors given by modern Acts (*m*) and practice render the exactitude of pleading of less consequence. Thus, in indictments, the formal conclusion *contra formam statuti* or *statutorum* is no longer essential (*n*). But one relic of the old technicalities remains—that it is usually held necessary that the indictment should negative all the provisoes, qualifications, and 42 & 43 Vict. c. 49.

(*g*) Bullen and Leake (6th ed.), p. 5; 1 Chitty, Pl. p. 236; Taylor, Evidence (10th ed.), s. 239; Roscoe, Nisi Prius (17th ed.), p. 254.

(*h*) R. S. C. 1883, O. 19, r. 15; Ann. Pr. 1906, p. 243.

(*i*) R. S. C. 1883, O. 19, r. 12, O. 21, r. 19; Ann. Pr. 1906, pp. 241, 269. Most of these enactments are repealed by 56 & 57 Vict. c. 61, s. 2, but the effect of the repeal is somewhat doubtful.

(*k*) See *Bradlaugh v. Clarke* (1883), 8 App. Cas. 354.

(*l*) Vide Archbold, Cr. Pl. (23rd ed.), p. 71; *Longmead's case* (1795), 2 Leach, C. C. 694, 696.

(*m*) 7 Geo. 4, c. 64, s. 21; 14 & 15 Vict. c. 100, s. 24.

(*n*) *Castro v. R.* (1881), 6 App. Cas. 229, 242, Lord Blackburn.

Mode of citation.

exemptions attached to the definition of a statutory offence, instead of stating the crime and leaving the defendant to bring himself within the exception (*o*).

52 & 53 Vict.  
c. 63. In Scotland the statute and section are specified, and the same mode of identifying the offence may, under the Interpretation Act, 1889, s. 35, be adopted in England, but, is, as already pointed out, unusual.

(1) Of old  
Acts. Many of the ancient statutes are cited by the name of the place where the Parliament was held in which they were made; *e.g.* the Provisions of Merton and Statutes of Westminster (*p*).

Others are named from their subject-matter, *e.g.* *Articuli Cleri* (9 Edw. 2) and the statute *de Donis Conditionalibus* (13 Edw. 1, c. 1), and the Statutes of Jewry (*q*).

A third class are named from their initial words, in the same manner as Papal Bulls and the Psalms in the Vulgate; *e.g.*, *Quia Emptores* (18 Edw. 1, c. 1) (*r*).

From the reign of Edward II. it has been usual to cite by reference to the regnal year in which the session of Parliament began, it being the common law rule that an Act comes into force as of the first day of the session in which it was passed (*s*), unless another date is provided in the body of the statute. This mode of citation was by Brougham's Act (13 & 14 Vict. c. 21), s. 3 (*t*), adopted for parliamentary purposes as to all Acts prior to the reign of Henry VII.

The ancient and cumbersome mode of citing statutes is superseded as to many Acts by their having received short titles (*u*) in subsequent statutes, while almost every modern Act contains a section declaring its short title, and groups of statutes *in pari materia* receive a "collective" statutory short title; *e.g.* the Merchant Shipping Acts, 1894 to 1900 (*x*), the Tithe Acts (*y*), and the Summary Jurisdiction Acts (*z*).

(2) Of modern  
Acts. Since 1889 (*a*) all Acts, whether public, local and personal, or private, may be cited in any statute, instrument, or document, either—

(1) By the short title, if any (*b*) (*i.e.* the short title given by

(*o*) In *R. v. James*, (1902) 1 K. B. 540 (C. C. R.), the authorities on this subject were fully discussed, and it was held unnecessary to negative a proviso which was not incorporated directly or by reference with the enacting clause. In the case of offences punishable on summary conviction, the common law rule as to the pleading by the prosecution of statutory exceptions, &c. does not apply: 42 & 43 Vict. c. 49, s. 39.

(*p*) 1 Bl. Comm. ed. Hargrave, p. 86, *n*.

(*q*) 4 Co. Inst. 25.

(*r*) Comyns, Dig. tit. Action upon Statute, I.

(*s*) As to Scots Acts, see *ante*, p. 31.

(*t*) Repealed and in substance re-enacted by 52 & 53 Vict. c. 63, ss. 35, 41.

(*u*) See Appendix B.

(*x*) 63 & 64 Vict. c. 32.

(*y*) 54 & 55 Vict. c. 8, s. 12 (3).

(*z*) 52 & 53 Vict. c. 63, s. 13 (10).

(*a*) *Ibid.*, s. 35 (1).

(*b*) Few Acts prior to 1793 have short titles; but in modern legislation, when



statute, not the popular short title, nor the ordinary title, even if it be short); or

- (2) By reference to the regnal year in which the Act was passed, and, where there are more statutes or sessions than one in the same regnal year, by reference to the statute (*c*) or session (*d*), as the case may require, and where there are more chapters than one, by reference to the chapter, and particular enactments may now be cited by reference to the section or sub-section in which they are contained.

The object of these provisions is mainly to facilitate the work of the parliamentary draftsman and to shorten the rules and orders made by departments of State under statutory authority. But they also apply to pleadings, and it is therefore no longer necessary, where a statute has to be pleaded, to refer to it in such detail as has hitherto been usual. The new mode of citation will be of most value, and is being gradually adopted, in criminal pleadings.

The second mode of citation has hitherto, as a rule, been adopted only by the draftsmen of statutes relating solely to Scotland (*e*), who usually describe a statute as "the Act [twenty and twenty-one] Victoria, chapter [seventy-two]" (*f*). The draftsmen of English Acts before, and very often since, 1890, describe a recited Act which has no short title as "an Act of (or passed in) the session held in the      and      years of H      Majesty      , intituled, &c.," with, or until recently without, mention of the chapter (*g*).

Citation by the regnal year in a Bill is inconvenient for parliamentary purposes, as the risk of clerical error is great, and the figures convey no idea to the legislator. For forensic purposes, on the other hand, this is the more convenient method, as it gives the reference to the Statute-book, which the short title does not. But citation by the regnal year will no doubt in time give way to the preferable method of citation by the secular year, already adopted in some of the colonies and in India (Act No. 5 of 1880) (*h*).

Under the old system of pleading, where the statute was the basis of a claim or defence, and was not referred to by way of inducement only, any variance in the description, even such as

Effect of  
erroneous  
citation.

(1) Old rule.

an old Act is amended or dealt with, it frequently receives a statutory short title. See Appendix B.

(*c*) Here used in its original sense; *vide* p. 53, *infra*.

(*d*) As in 1886 and 1899.

(*e*) But see the Allotments Act, 1887 (50 & 51 Vict. c. 46), s. 4.

(*f*) See 53 & 54 Vict. c. 67, s. 29.

(*g*) See 53 & 54 Vict. c. 45, s. 28 (1); c. 47, s. 1 (2); 54 & 55 Vict. c. 8, s. 12 (3), (4), (5).

(*h*) The statutes of Victoria and South Australia are numbered in a continuous series without regard to the year in which they were passed.

(2) Modern rule.

reference to the wrong regnal year, was held fatal (*i*). The other party to the proceeding could take the exception that no such statute existed, and the Courts declined to take judicial notice of a public general Act not correctly referred to, or to accept as proof of a private Act a record out of Chancery not identical with that pleaded. Thus, in referring to Acts of Philip and Mary, the figures 4 & 5 mean 4th of Philip and 5th of Mary, and a plaintiff was nonsuited by Lord Mansfield for describing as of 4 Ph. & Mar. an Act which, on reference to the Parliament Roll, appeared to be of 4 & 5 Ph. & Mar.: *Rann v. Green* (1776), Cowp. 474 (*k*). Even in modern times it is doubtful whether leave would be given to amend a wrong reference in the case of a plea of not guilty by statute (*l*), and in the case of *James v. Smith*, (1891) 1 Ch. 384, Kekewich, J., refused to allow amendment when the wrong section of the Statute of Frauds had been pleaded.

When a session began in one regnal year and continued into another, an Act passed in the session could not be pleaded as having been passed in both years, but had to be described as having been passed either in a session held in both years, or in the year in which it received the royal assent, according as the Act was prior or subsequent to 1793 (*m*).

Until 1793, when no date was fixed for the commencement of a statute, it was held to come into force on the first day of the session on which it was passed, a rule obviously inconvenient by reason of its retrospective operation, and often found unjust in practice (*n*).

In 1793 it was enacted (33 Geo. 3, c. 13) that Acts should come into force on the day on which they received the royal assent, in the absence of other provision in the body of the Act, and that the Clerk of the Parliaments should indorse in English on each Act the date of the royal assent as soon as it was given, and that this indorsement should be taken as part of the Act, and should be the date of its commencement when no other commencement is provided in the Act. In the printed copies this date is not *indorsed*, but is placed on the first page of the Act, just below the full title, and for the Parliament Roll the Clerk of the Parliaments prefixes the certificate to the vellum print of the statute.

(*i*) *Partridge v. Strange* (1553), Plowd. 78, 79; *Bryant v. Withers* (1813), 2 M. & S. 123, 132; and *cf. Dunn v. Mustard* (1899), 1 Fraser (Justiciary), 81.

(*k*) See Beven on Negligence (1st ed.), p. 779, note 1, for the former consequences of *concordance* & A.D.

(*l*) Now . . . . . cases by 56 & 57 Vict. c. 61, s. 2.

(*m*) *Gibbs v. Pike* (1841), 8 M. & W. 228, Parke, B.; *cf. R. v. Biers* (1834), 1 A. & E. 327.

(*n*) In the case of *Incense*, before the Archbishops in 1899, it was argued that the words "in the second year of the reign of King Edward VI.," used in sect. 13 of the Act of Uniformity (1 Eliz. c. 2), commonly called the ornaments rubric, referred to the . . . . . Book of Edw. VI., and on the other side it was contended that the words meant to apply to the Prayer Book brought into use under 2 & 3 Edw. 6, c. 1.

The Courts were bound to take judicial notice of the beginning and end of prorogations and sessions of Parliament (*o*). As to Acts passed before 1793, they used to discharge this duty by holding any misrecital of the date of an Act fatal (*p*), until, to avoid the risk, the ingenuity of the pleader introduced the phrase: "Against the form of the statute (or statutes) in that case made and provided" (*q*). But even this device was not without its risks until the reform of civil pleading, and the passing of 14 & 15 Vict. c. 100, s. 24, as to criminal pleading.

It used also to be held needful to set out the full title of the Act referred to (*r*), but the Courts gradually relaxed strictness as to this requirement so long as the Act could be identified, and the provisions of the Interpretation Act, 1889 (52 & 53 Vict. c. 63), as to citation by short titles, supersede the necessity of this practice (*s*). The Short Titles Act, 1896 (59 & 60 Vict. c. 14), which gave short titles to about 2,000 Acts, has greatly simplified the mode of citation (*t*).

(*o*) *R. v. Wilde* (1671), 1 Lev. 296.

(*p*) *R. v. Biers* (1834), 1 A. & E. 327.

(*q*) *Palgrave v. Windham* (1718), 1 Str. 214.

(*r*) *Beck v. Beverley* (1843), 11 M. & W. 845.

(*s*) See also *R. v. Westley* (1860), Bell Cr. Cas. 193; *Esdaille v. Maclean* (1846), 15 M. & W. 277.

(*t*) This Act embodies and amplifies the list given in the Short Titles Act, 1892 (55 & 56 Vict. c. 10), but does not include short titles given to an Act by one of its own clauses. For these short titles, see Appendix B.

## CHAPTER IV.

## CLASSIFICATION OF STATUTES.

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Statute  
defined.

1. THE word "statute" in English law (*a*) has always meant "an Act of Parliament" in the proper sense of the word. "If an Act be penned," says Coke in *The Prince's case* (1605), 8 Rep. 20 *b*, "that the King with the assent of the Lords, or with the assent of the Commons, it is no Act of Parliament, for three ought to assent to it (*b*), *scil.* the King, the Lords, and the Commons, or otherwise it is not an Act of Parliament." It is used in contradistinction to the "common law" and to "ordinance" (*c*), which, as Coke points out (1 Inst. 159 *b*), differ from a statute in this, that every statute must be made by the King with the assent of the Lords and Commons, and if it appears by the Act that it was made by two only, it is no statute, but merely an ordinance. "Many ancient statutes are penned in the form of charters, ordinances, commands or prohibitions from the King without mentioning the concurrence of lords or commons, yet inasmuch as they have always been acquiesced in as unquestionably authentic this establishes and confirms their authority, and this defect is solved by such uni-

(*a*) When used by the Civilians, "statute" meant the whole municipal law of the State, from whatever source emanating. See Dwarrris on Statutes (2nd ed.), p. 485; Sedgwick, Statutory Law (2nd ed.), p. 33.

(*b*) Some of the earliest documents treated as statutes lack this triple assent; e.g. 20 Hen. 3 (Provisions of Merton) and *Quia Fieri* (1267) (12 & 13 Edw. 1, c. 1).

(*c*) The laws of certain Crown Colonies are termed ordinances, as are the Acts of the Long Parliament.

versal reception" (*d*). A charter made "*de assensu prelatorum comitum baronum ac totius communitalis regni in instanti Parlamento apud Westmonasterium convocato*" has been held equivalent to an Act of Parliament (*e*). But in the *Wiltes Peerage Claim* (1862—69), L. R. 4 H. L. 126, 158, a solemn adjudication by the King in Parliament, with the assent of the peers at the request of the Commons, was held not to be a statute (*f*).

These older documents or ordinances, which are accepted as having the force of a statute, must be carefully distinguished from proclamations. The Crown has no prerogative (*g*) right to legislate by proclamation (*per rescriptum principis*) for any part of the United Kingdom (*h*). The statute of 1539 (31 Hen. 8, c. 8), which for a time gave such power, was repealed in 1547 (1 Edw. 6, c. 12, s. 4), and a claim by James I. to legislate by proclamation was defeated by the action of the judges in the case of Proclamations (1610), 12 Co. Rep. 74, and the only notable instance of an attempt to legislate by proclamation in modern times is that of Lord Chatham in 1766, and its illegality was recognised by an Act of Indemnity passed in 1767 (7 Geo. 3, c. 7). This rule extends to treaties, which acquire no force within the realm by proclamation or except by statutory recognition (*i*).

Proclamations  
not statutes.

The term "statute" at one time was taken as meaning all the Acts of one session, but it has long been used as equivalent to a separate Act, as distinct from the enactments included therein.

The term "statutes at large," first employed in the edition of Barker published in 1587, is used in distinction to the abridgments of the statutes, frequently published prior to that date (*k*), and still represented by Chitty's Statutes and the Law Journal Abridgment.

Statutes at  
large.

2. [Various attempts have been made to classify the statutes according to the real or supposed difference of the rules of interpretation to be applied, and although the rules which govern their interpretation and effect, as will be seen (*l*), do not vary much, to whatever class a statute belongs, still it is desirable, if only as a matter of nomenclature, before considering the rules, to indicate the chief methods of classification which have been

Attempts to  
classify  
statutes.

(*d*) Hawkins' preface to Statutes (1735). As to the constitutional history of the development of legislation from the form of royal order into the form of a statute, see Anson, *Law and Custom of the Constitution* (4th ed.), vol. ii. pp. 238—244; Ilbert, *Legislative Methods and Forms*.

(*e*) *Islington Market Inc.* 1545. 3 Cl. & F. 513.

(*f*) See 2 Gneist, *Const. Hist.*, p. 22, *n*.

(*g*) Proclamations issued under statutory authority are a form of subordinate legislation. See *post*, Part II. ch. iii.

(*h*) As to legislation by proclamation for British possessions, see *post*, Part II. ch. ix.

(*i*) *Walker v. Baird*, (1892) App. Cas. 491. By the law of the U. S. a treaty, when approved by the Senate, becomes part of the supreme law of the land.

(*k*) See 1 *Statt. Realm*, Intr. p. xxiii.

(*l*) See the rules as to construing penal statutes, *post*, Part III.

adopted. "The most popular division of Acts of Parliament," says Wynne, in *Dialogue III.* vol. ii. p. 99, "arises from considering them as public or private, temporary or perpetual, remedial or explanatory, in affirmance or derogation of common law." The main divisions recognised are made with reference to—

- (a) The time when the Acts were passed ;
- (b) Their extent ;
- (c) Their contents or subject-matter ;
- (d) Their object ;
- (e) Their method ; and
- (f) Their duration.

Classification  
by date.

3. [The earliest division is into "*vetera*" and "*nova statuta*."] This classification is first found in Coke's Institutes. The *vetera statuta* include all statutes or ordinances (*m*) recognised as having the force of law which are either prior to the reign of Edward III. or *incerti temporis*. Those from the reign of Edward III. have been styled *nova statuta*. But few of the former now remain on the Statute-book (*n*). Of the remaining statutes many only declare the common law, and few have come under judicial consideration (*o*) in recent years except the Statutes of Merton, Westminster (*p*), Marlbridge (*q*), and Gloucester (*r*), and the statute *de Donis* (*s*).

The main distinctions between these earlier enactments and those of later date are—

1. The greater difficulty in authenticating their text and legislative validity ; and
2. The greater latitude permitted or taken in their construction by the earlier judges and text-writers, whose opinions would now be regarded as *contemporanea expositio* (see *post*, p. 80).

By extent.

4. Classification by reference to the extent of the operation of an Act is unsatisfactory.

The mediæval judges seem to have roughly divided the statutes into general and special, and to have decided, as to the first class, that they would notice them judicially in the same way as they noticed the common law or custom of the realm

(*m*) See Co. Litt. 159 *b*, and p. 52, *supra*, and Dwaris (2nd ed.), p. 460 ; Bacon's Abridgment, tit. Statute (7th ed.), p. 431.

(*n*) They take up in text and translation only eighty-two pages of the Revised Statutes (2nd ed.) : but a few not specifically repealed have been omitted from that edition.

(*o*) See 2 Reeves, Hist. Eng. Law (3rd ed.), pp. 85, 354 ; [Dwaris on Statutes (2nd ed.), p. 460 ; Bacon, Abridgment, tit. Statute (7th ed.), p. 431 ; Comyns, Dig. tit. Parliament, R.].

(*p*) *Robinson v. Dhulceep Singh* (1878), 11 Ch. D. 798.

(*q*) *Avis v. Newman* (1889), 41 Ch. D. 532.

(*r*) *Mount v. Taylor* (1868), L. R. 3 C. P. 645.

(*s*) *Rivett-Carnac's Will* (1885), 30 Ch. D. 136.

which the statutes declared or altered, and, as to the second class, that they would treat them, like local customs, as exceptions on the general law requiring special proof. This led to a second classification, into public and general (*t*) as distinguished from private and special, which was thrown into confusion by the practice introduced in the last century of inserting in special Acts a clause requiring them to be deemed public Acts; moreover, it was held that general Acts might contain private clauses (*u*). Owing to this practice, and to the rules as to judicial notice stated *ante*, pp. 33, 42, the term "Public Act" is not of any real value in considering a statute (*x*). And at present there is no proper or authoritative classification of public or private Acts, those adopted by Parliament and the judges differing, and neither being scientific.

For judicial purposes an Act is general which is included in the Public General Acts, published by authority at the close of every session, whatever be the area over which it extends. For parliamentary purposes an Act is public which is not brought in on petition, and is not subject to parliamentary fees. "A general Act *primâ facie* is that which applies to the whole community. In the natural meaning of the term it means an Act of Parliament which is unlimited both in its area and as regards the individual in its effects. And as opposed to that you get statutes which may well be public because of the importance of the subjects with which they deal and their general interest to the community, but which are limited in respect of area—a limitation which makes them local, or limited in respect of individuals or persons, which makes them personal" (*y*).

In *Mayor, &c. of London v. Netherlands Steam Boat Co.*, (1906) A. C. 262, 269, Lord Davey said: "I confess I am surprised to hear the Act of 1812 (52 Geo. 3, c. 49) and the subsequent Act of 1832 (2 & 3 Will. 4, c. 66) described as local and personal Acts. The Act of 1812 must have been brought in and promoted by the Treasury on behalf of the Crown, and the effect was to authorise the application of public money in the purchase of a site for the erection of a new Custom House, and also to impose a large annual charge on the consolidated customs which were part of the public revenue. According to constitutional usage such purposes could only be effected by a public Act, and I think that the Acts both of 1812 and 1832 ought to be treated as public Acts" (*z*).

(*t*) As to the views hereon held in 1798, see Ilbert, *Forms and Methods of Legislation*, 48, *n*.

*l. c.*, *n*.

(*x*) *R. v. London County Council*, (1893) 2 Q. B. 454, 462, Bowen, L.J., following *Richards v. Easto*, 15 M. & W. 244; and *Shepherd v. Sharp*, 25 L. J. Ex. 254 (Ex. Ch.). As to the origin of the term, see *post*, Part IV. ch. i.

(*y*) See *R. v. London County Council*, (1893) 2 Q. B. 454; 63 L. J. Q. B. 4; 69 L. T. 580; 42 W. R. 1.

(*z*) See per Lord Halsbury at p. 268.

Local and personal.

The term "local and personal" is now a term of art. It is recognised in the Interpretation Act, 1889 (52 & 53 Vict. c. 63), s. 39, and in the Statute Law Revision Act, 1890 (53 & 54 Vict. c. 33), by which certain Acts previously included among the "public general Acts" are declared local and personal, *i.e.* quasi-public, but not of general public interest. Acts of this class passed since 1868 are printed in a series of volumes separately from both public and private Acts, and are numbered in Roman numerals. All since 1850 (*a*), and many before that date, are to be judicially noticed; but in passing through Parliament they are treated as private Bills.

Private.

The term "private" in the Standing Orders of both Houses includes all Bills affecting the interests of particular localities, and not of a general public character (*b*). It covers local and personal Bills. As a classification of Acts, it means those which require proof in a court of justice (*c*); *i.e.* in respect to Acts since 1850, those only which contain an express provision that they shall not be deemed public (*d*). Such as are printed are numbered in Arabic numerals (*e*).

Blackstone's classification.

Blackstone (*f*) divides statutes into *general* or *special*, *public* or *private*, but goes on to treat the terms "general" and "public" as applicable to the same Acts.

"A general (*g*) or public Act is an universal rule that regards the whole community, and of this the courts of law are bound to take notice judicially and *ex officio*, without the statute being particularly pleaded."

52 & 53 Vict.  
c. 63, s. 9.

This definition has been altered for judicial purposes by the Interpretation Act, 1889 (repealing and re-enacting 13 & 14 Vict. c. 21, s. 7), which declares that all Acts passed after 1850 are to be *public* Acts, and to be judicially noticed as such, unless they contain a provision to the contrary (*h*). The effect of this is to make it unnecessary to prove any modern Act (unless it contains a clause declaring that it is a private Act), and to give such an Act all the effect of a public Act (*i*). Blackstone (1 Comm. 86) defines "*special* or *private* Acts" as "rather exceptions than rules, being those only which operate upon

(*a*) Interpretation Act, 1889, s. 9, Appendix C.

(*b*) 1 Clifford, 267, 491; see May, Parl. Pr. (10th ed.), 634; Standing Orders of House of Commons (Parl. Pap. 1906, No. 108, pp. 37 *et seq.*); and of the House of Lords (1905, Nos. 165 and 177); Ilbert, Forms and Methods of Legislation, 49, *n*.

(*c*) 1 Cliff. 268; Co. Litt. 98 *a*, ed. Thomas, note (10); and see 8 & 9 Vict. c. 113, ss. 3, 5; 14 & 15 Vict. c. 99, s. 14; 45 & 46 Vict. c. 9, s. 2.

(*d*) See 52 & 53 Vict. c. 63, s. 9.

(*e*) *Id.* 2 Clifford, 770.

(*f*) 1 Comm. 86.

(*g*) See May, Parl. Pract. (10th ed.), 648.

(*h*) The first general Act in the same direction was 27 Geo. 2, c. 16, s. 2, enacting that all Acts previously passed for erecting local courts of requests or courts of conscience should be judicially noticed as public Acts.

(*i*) *Aiton v. Stephen* (1876), 1 App. Cas. 456, Lord Cairns; *vide post*, pp. 57, 58.



particular persons and private concerns" (*k*). This definition does not cover what are now called local Acts, which constitute a special public law for a particular area, but applies to an enormous number of Acts relating to railways, canals, gas, water, insurance, and other companies, and to inclosure Acts. The term "special Act" is still in frequent use with reference to the Lands, Companies, and Railways Clauses Acts of 1845, and the Gas, Water, and Towns Police Clauses Acts of 1847. In that context it has the meaning given it by Blackstone, and is used in opposition to the general Acts, whose clauses it incorporates for the purposes of the particular undertaking. In some cases public Acts giving powers for the compulsory taking of land are put into the position of special Acts with reference to the Lands Clauses Acts (*l*).

Criticism  
thereon.

Blackstone's definition is made with regard only to the law of England. Since the Treaty and Act of Union, and the extension of the British empire—

- (1) Few Acts cover the whole empire ;
- (2) Only a small proportion, the whole of the United Kingdom ;
- (3) Many are limited in extent to England, Scotland, or Ireland, and some to Wales ; and
- (4) Many Acts not extending to the whole of any part of the United Kingdom are printed among the public general statutes, although they are certainly not general (*m*) ; and
- (5) Many Acts described as public Acts of a local character are not printed among the public general statutes, but as local and personal Acts.

The term "public general Act" no longer includes all Acts to be judicially noticed, for all Acts passed since 1850 are public, and to be judicially noticed unless the contrary is expressly provided by the Act (*n*). The provisions in special Acts requiring the undertaker to keep and give inspection of a copy do not affect this rule. And, so far as Parliament is concerned, Acts are classified by reference to the difference of method adopted in examining the Bills, and to the fact that parliamentary fees are levied on one set of Acts and not on the other (*o*).

The proper classification would therefore seem to be (*p*)—

- (1) Public Acts :
  - (a) General ; *i.e.* with reference to the whole empire

(*k*) "Only a particular thing, species, or person" : Ilbert, *Forms and Methods of Legislation*, 49, *n*.

(*l*) *E.g.* Housing of the Working Classes Act, 1890 (53 & 54 Vict. c. 70), ss. 38 (4), 98.

(*m*) This classification is made with reference to the procedure in Parliament in passing the Acts.

(*n*) 52 & 53 Vict. c. 63, s. 9.

(*o*) See Standing Orders of H. of C. 1906, Private Bills, No. 1.

(*p*) 1 Clifford, 267, 268 ; and see *R. v. London County Council*, (1893) 2 Q. B. 454.

- or to the whole United Kingdom or to one of its main sub-divisions.
- (b) Local; *i.e.* relating to a subordinate area in a constituent part.
- (c) Personal; *i.e.* relating to incorporations of trading bodies, &c.
- (2) Private Acts (*q*), relating to the affairs of individuals:
  - (a) Printed.
  - (b) Not printed.

(1 c) would more properly fall under private Acts but that the parliamentary charters which form this class of Act almost always grant rights of interference with public and private property.

Modern  
history of  
classification  
of local and  
private Acts.

Till the end of 1797 local and personal Acts to be judicially noticed were numbered and printed with the public Acts, and the only distinction known was between public and private Acts, which included estate Acts, divorce Acts, naturalisation Acts, and also drainage and inclosure Acts (*r*). From 1798 to 1803 the statutes were divided into three classes—

- (1) Public general;
  - (2) Local and personal, declared public and to be judicially noticed;
  - (3) Private and personal, not to be judicially noticed.
- The last class was not ordered to be printed at all (*s*).

From 1803 to 1813 the classification was—

- (1) Public general Acts;
- (2) Local and personal Acts, to be judicially noticed;
- (3) Local and personal Acts, not printed.

From 1814 to 1868 the classification was—

- (1) Public general Acts;
- (2) Local and personal Acts declared public;
- (3)—(i.) Private Acts printed by the King's printer; and  
(ii.) Private Acts not so printed (*t*).

From 1814 until 1850 a clause was inserted in all the Acts in sub-class (a) to the following effect:—

“And be it further enacted, that this Act shall be printed by the several printers to the King's most excellent Majesty duly authorised to print the statutes of the United Kingdom, and a copy thereof so printed by any of them shall be admitted as evidence thereof by all judges, justices, and others.”

In 1850, by Brougham's Act (13 & 14 Vict. c. 21), s. 7, it was provided that every Act passed after the 10th of June, 1850,

(*q*) See House of Commons Papers, 1833, vol. xii. p. 171, for an account by Sir F. Palgrave of the origin and history of these Bills; and see *Jour. Soc. Comp. Leg.*, N. S., 1900, p. 81.

(*r*) Ilbert, *Legislative Methods and Forms*, p. 28.

(*s*) *Ibid.* p. 49.

(*t*) 1 Clifford, 267.

should be deemed and taken to be a public Act, and should be judicially taken notice of as such, unless the contrary was expressly provided and declared by such Act. This provision is now embodied in the Interpretation Act, 1889, s. 9, as a general rule of construction, and its effect is to make all modern Acts, with few exceptions, public Acts so far as judicial notice by the Courts is concerned (*u*).

52 & 53 Vict.  
c. 63.

Since 1868 the class "local and personal" has been altered to "local," all personal Acts being relegated to the class "private Acts," and in the tables of the statutes a distinction is made between public Acts of a local character and other local Acts by putting the mark P. before the former, which mainly consist of provisional order confirmation Acts and marriage validation Acts (*x*). But it is clear that this distinction has no judicial significance, and in no way alters the rules of construction applicable to the Acts in question. The private Acts are divided into (i) those printed by the King's printer, (ii) those not so printed. There is no index of local and private Acts prior to 1801 (*y*). A classified list from 1801 to 1899 was published in 1900 under the authority of the Statute Law Committee.

5. The only serious attempt to classify Acts by their subject-matter is that in the chronological table and index of the statutes now published annually under the direction of the Statute Law Committee. But it only deals with public general Acts (*z*).

By subject-matter.

6. Most of the judicial terms applied to Acts relate to their object. Acts are, from this point of view, described as declaratory, remedial, enabling, or penal (*a*), and as being in affirmation or derogation of the common law.

By their object.

[If a doubt was felt as to what the common law is on some particular subject, and an Act was passed to explain and declare the common law, such an Act was called a *Declaratory Act* (*b*).]

Declaratory Acts.

For modern purposes a declaratory Act (*c*) may be defined as

(*u*) *Antq.* p. 33.

(*x*) For a list of such Acts printed among the public general Acts, see Chronological Table and Index to Statutes (ed. 1906), vol. ii.

(*y*) In Roscoe's *Nisi Prius* (17th ed.), 106, are stated the sources of information as to private Acts passed before 1801.

(*z*) See preface to the volumes; and *vide infra*, p. 143, as to statutes *in pari materia*.

(*a*) As to these, *vide post*, Part III.

(*b*) These two classes of statutes are mentioned by Blackstone (1 Comm. 86), but at the present day it is not usual to give a statute a different operation according as it is a *declaratory* or *remedial* Act. Lord Coke, however, says that, "by reason of this word [declared], whereby it appeareth what the law was before the making of this Act, like cases in semblable mischief shall be taken within the remedy of such an Act." Co. Litt. 290.

(*c*) Several Acts of this kind have passed in recent sessions; e.g. the Bills of Exchange Act, 1882 (45 & 46 Vict. c. 62); the Partnership Act, 1890 (53 & 54 Vict. c. 39); the Sale of Goods Act, 1893 (56 & 57 Vict. c. 71); and the Marine Insurance Act, 1906, which declare and amend the common law, the law merchant, and the statute law on that subject, and form codes. These Acts aim mainly at declaring the common law, and only to a small extent at overruling judicial decisions.

an Act passed to remove doubts existing as to the common law, or the meaning or effect of any statute, or to codify the rules of equity and the common law as established by judicial decisions. The passing of a declaratory Act, viewed constitutionally, is an assertion of supreme judicial authority, such as was often exercised in earlier Parliaments, and not of legislative authority.

Declaratory Acts are usually held to be retrospective (*d*).

A common application of declaratory Acts is to set aside what Parliament deems to have been judicial errors, whether in the statement of the common law or in the interpretation of statutes. Usually, if not invariably, such an Act contains a preamble, and also the word "declared" as well as the word "enacted." Thus, in *Price v. Bradley* (1885), 16 Q. B. D. 149, the Court decided eels to be fresh-water fish within 41 & 42 Vict. c. 39. This decision was regarded by Parliament as a scientific error, and by 49 & 50 Vict. c. 2, it was *declared* that fresh-water fish in the first-mentioned Act did not include eels. The most salient instance in modern times of a declaratory Act is the Territorial Waters Jurisdiction Act, 1878, passed in order to overrule the opinion of the majority of the judges in *The Franconia case* (*R. v. Keyn* (1878), 2 Ex. D. 63) as to the limits of British territorial waters. The preamble asserts, in defiance of the judicial majority, that "the right jurisdiction of Her Majesty, her heirs and successors, extends, *and has always extended*, over the open seas adjacent to the coasts of the United Kingdom, and of all other parts of Her Majesty's dominions, to such a distance as is necessary for the defence and security of such dominions." The opinion of the minority in *The Franconia case* has been therefore not only enacted but declared to have been always the law (*e*).

41 & 42 Vict.  
c. 73.

Remedial  
Acts.

[A Remedial Act is defined by Blackstone (*f*) as one made to "supply such defects and abridge such superfluities in the common law as arise, either from the general imperfection of all human laws, from change of time and circumstances, from the mistakes and unadvised determinations of unlearned (and even learned) judges, or from any other cause whatever." But this definition is too narrow, for the operation of remedial Acts is not confined to the common law, but extends also to prior enactments. In earlier Acts the grievance is usually recited in the preamble, and the statute resembles in form a petition for redress of grievances, for which the existing law was insufficient (see 23 Hen. 8, c. 5, Commission of Sewers, preamble), and in many Acts the words "for remedy whereof" immediately precede the words of enactment. In modern public Acts a preamble is usually dispensed with, and the nature of the grievance, if any, to be remedied is left to be gathered from the tenor of the title and enacting part.

(*d*) See *post*, Part II. ch. vi.

(*e*) *Reg. v. Dudley* (1884), 14 Q. B. D. 273, 281.

(*f*) 1 Comm. 80.

The distinction between declaratory and remedial Acts was originally taken with reference to their effect on the common law or custom of England, and not with reference to their explanation or repeal of prior statutes. An Act is said by Blackstone to be declaratory "where the old custom of the realm is almost fallen into disuse or become disputable, in which case Parliament has thought proper, *in perpetuum rei testimonium*, and for avoiding all doubts and difficulties, to declare what the law is, and ever hath been" (g).

Remedial Acts are subdivided by Blackstone into *enlarging* and *restraining* Acts, the former widening the common law where it was too strict or narrow, the latter taking away or cutting down rights existing at common law. His instance of an enlarging Act is 5 Eliz. c. 11 (rep.), which made it treason to clip the current coin of the realm. A more happy example would be that of the statutes increasing the powers of tenants for life to deal with settled lands, which would match his instance of 13 Eliz. c. 10, restricting the powers of leasing by spiritual corporations. Both terms are in truth purely relative. The same statute may be "enlarging" as to one set of persons, "restraining" as to others. Every creation of a new offence enlarges the scope of the criminal law and restrains *pro tanto* the liberty of individuals (h). The Irish Land Acts enlarge the rights and interests of the tenant, and restrict those of the landlord. Indeed, the same Act may be "remedial" from one point of view and "penal" from another (i). And almost every statute, except appropriation Acts, may be described as *remedial*, since its passing presupposes some grievance which the Act is intended to rectify. Even a Statute Law Revision Act or a Consolidation Act remedies the grievance of the prolixity, complexity, and undigested redundancy of the contents of the Statute Book.

Enlarging  
and restrain-  
ing Acts.

[A statute which makes it lawful to do something which would not otherwise be lawful is called an *Enabling* Act (k).

Enabling  
Acts.

The most ordinary instances of such statutes are to be found in Acts which authorise land to be taken compulsorily in order to carry out some public work, or legalising what would otherwise be a public or private nuisance. But there are a number of other things which can only be done by Act of Parliament; for instance, as Cockburn, C.J., said in *R. v. Twiss* (1869), L. R. 4 Q. B. 407, 412, "nothing short of an Act of Parliament can divest consecrated ground of its sacred character"; as the Judicial Committee pointed out in *Duranty v. Hart* (1863), 2 Moore,

(g) 1 Comm. 86. Magna Charta is for the most part declaratory. The Statute of Treasons (25 Edw. 3, c. 2) purports to be wholly so. See 3 Co. Inst. 1.

(h) See *Re Bellencontre*, (1891) 2 Q. B. 122, 141, Wills, J.

(i) 11 Geo. 2, c. 19, has been held remedial in *Stanley v. Wharton* (1821), 9 Price, 301, but penal in *Hobbs v. Hudson* (1890), 25 Q. B. D. 232.

(k) See effect of enabling Acts discussed *post*, Part II. ch. ii.

P. C. N. S. 389, at p. 313, note (b), "Nothing short of an Act of Parliament can displace a decision of the Supreme Court." So in *Re Bishop of Natal* (1864), 3 Moore, P. C. N. S. 115, at p. 148, the Judicial Committee said: "After the establishment of an independent Legislature in a colony, there is no power in the Crown by virtue of its prerogative, and without an Act of Parliament, to create a bishopric or other ecclesiastical corporation." So in *The Prince's case* (1605), 8 Co. Rep. 16 b, it was pointed out that "a course of inheritance which is against the rules of the common law cannot be created by charter without the force and strength of an Act of Parliament." So in *Brumfitt v. Roberts* (1870), L. R. 5 C. P. 224, it appeared that by a private Act (2 & 3 Vict. c. xxxiii.) a special interest in certain pews not known to the common law was created; and in a similar way the Court (in *Medway v. Earl of Romney* (1861), 30 L. J. C. P. 236) recognised the creation of a new species of statutory property and interest in water (l). So in *Montrose Peerage Claim* (1853), 1 Macq. H. L. (Sc.) 401, 404, Lord Cranworth said: "I take it to be a matter admitting of no controversy that . . . the effect [of the Act] was to destroy that creation [i.e. the Dukedom of Montrose]. It was not necessary that there should be any attainder. Parliament was omnipotent" (m).

By their  
method.

7. The terms "*Obligatory*," "*Permissive*," "*Mandatory*," and "*Directory*" (n) seem to have reference to the method by which the Legislature sets about attaining its object.

[The epithets "*Obligatory*" and "*Permissive*" are applied to enabling statutes according as the persons affected by such statutes have or have not an option about doing the thing which the statute deals with. If there is no option, the statute is called "*obligatory*," but if there is, it is called "*permissive*."

Imperative  
Acts.

The epithets "*Imperative*" and "*Mandatory*" are used with reference both to enabling Acts and to statutes which create duties. A statute which creates a duty is called "*imperative*," if it is not optional whether that duty be performed or not, and the same term applies to Acts imposing a condition satisfaction whereof is essential to the validity of the act or document as to which it is imposed.]

38 & 39 Vict.  
c. 55.

In *Young v. Mayor, &c. of Leamington* (1883), 8 App. Cas. 517, it was in dispute whether sect. 174 (1) of the Public Health Act, 1875, enacting that contracts made by an urban sanitary authority, whereof the value exceeded 50*l.*, should be in writing

(l) Cf. *Manchester Ship Canal Co. v. Manchester Racecourse Co.*, (1900) 2 Ch. 352, affd. in C. A., (1901) 2 Ch. 37.

(m) See *Earldom of Mar Restitution Act*, 1885 (48 & 49 Vict. c. 48).

(n) [Sedgwick, "*Statutory Law*" (2nd ed.), p. 318, points out that it is somewhat singular that the epithet "*directory*" should be used in this sense when applied to statutes, whereas, strictly speaking, it is synonymous with "*mandatory*." In *Entwistle v. Dent* (1848), 1 Ex. 812, 823, Pollock, C.B., used the word with regard to a commercial letter of instructions in the sense of "*mandatory*," by reference to the Roman law term *mandatum*.]

and sealed with the common seal of the authority, was imperative or directory. The Court of Appeal and the House of Lords decided that it was imperative, and that a contract not so sealed was void although executed, and that, although the sanitary authority had obtained the benefit of it, they were free from the usually correlative obligation of payment.

[Again, when a statute is passed for the purpose of enabling something to be done, and prescribes the formalities which are to attend its performance, those prescribed formalities which are essential to the validity of the thing when done are called *imperative* or *absolute*; but those which are not essential, and may be disregarded without invalidating the thing to be done, are called *directory* (o).] Directory  
Acts.

It has been laid down in Ireland that statutes are to be construed as mandatory and imperative when they prescribe acts to be done by private parties, but are only directory when they require public officers to do the acts, in which case the default or mistake of the officers will not destroy the rights of the parties (p). But this decision is inadequate. An Act may be mandatory upon a public officer, and may expressly or implicitly render him liable to punishment for disobedience to its provisions, without also exposing private persons to any civil or criminal liability or loss by reason of the default of the official. On the other hand, although the officer may be liable for a breach of duty, the performance by him of the duty may be a condition precedent to the attaching of the civil rights of other persons. Thus, if a book or design is not registered, the owner cannot sue for infringement, even though non-registration is due to default of an official who can be compelled by mandamus to register, or be punished in criminal or civil proceedings for his default. So also if an elector's name is omitted from the register he cannot contend that the provisions of the Registration Acts are directory. His only remedy is by action (q), or by summary proceeding before the revising barrister.

8. Acts are also classified, by reference to their duration, as temporary or perpetual. By their  
duration.

*Temporary* statutes are those on the duration of which some limit is put by Parliament (r). The Standing Orders of Parliament require a time clause to be inserted in such Acts, which usually provides that they shall expire at the end of the session

(o) See this discussed *post*, Part II. ch. ii.; and see *R. v. London JJ.*, (1893) 2 Q. B. 476, 491, Bowen, L.J.

(p) *Phinket v. Molloy* (1856), 8 Ir. Jur. N. S. 83.

(q) See *Reg. v. Hall*, (1891) 1 Q. B. 747.

(r) The Standing Orders of both Houses (H. C. 1906, No. 45; H. L. 1905) require a time clause to be inserted in such Acts. The best known of these Acts is the Army Annual Act, formerly called the Mutiny Act, whose temporary duration depends on constitutional considerations. For a list of these Acts, see Parl. Pap. 1893, c. 320, and the Annual Expiring Laws Continuance Acts.

after the time limited for their duration has run out (*s*). The Expiring Laws Continuance Acts usually contain a specific date for the expiry of the continued Acts (*t*).

*Perpetual* Acts are those upon whose continuance no limitation of time is expressly named or necessarily to be understood. They are not perpetual in the sense of being irrevocable (*u*).

These classes are more fully dealt with in Part II. ch. vi.

(*s*) As to the effect of a continuing Bill passed after the expiry of the continued Acts, see 48 Geo. 3, c. 106.

(*t*) See 5 Edw. 7, c. 21.

(*u*) Dicey, Law of the Constitution (6th ed.), 42.



# PART I.

## CONSTRUCTION OF STATUTES.

### CHAPTER I.

#### GENERAL RULES OF CONSTRUCTION WHERE THE MEANING IS PLAIN.

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“It is well at the outset to guard against confusion between *the meaning* and *the legal effect* of expressions used in a statute. The expression ‘construction’ as applied to a document, at all events as used by English lawyers, includes two things—first, the meaning of the words; and secondly, the effect which is to be given to them. The meaning of words I take to be a question of fact in all cases, whether we are dealing with a poem or a legal document. The effect of the words is a question of law.” (a).

1. Strictly speaking, there is no place for interpretation or construction except where the words of a statute admit of two meanings (b). The cardinal rule for the construction of Acts of

If meaning plain, consequences to be disregarded.

(a) *Chatenay v. Brazilian Submarine Telegraph Co.*, (1891) 1 Q. B. 79, 85, Lindley, L.J.

(b) Bell, Dict. Law of Scotland, tit. Statute.

Parliament is that they should be construed according to the intent of the Parliament which passed them (c). If the words of the statute are themselves precise and unambiguous, then no more can be necessary than to expound those words in their ordinary and natural sense. The words themselves alone do in such a case best declare the intention of the lawgiver (d). Rules of construction have been laid down because of "the obligation imposed on the Courts of attaching a meaning to confused and unintelligible sentences" (e). "If it be a question of statute law the inquiry becomes one of a much more restricted range" (than a question of common law): "it is then simply a question of construction, and none of these general considerations to which I have alluded" (moral right and wrong or general expediency and convenience) "have any place except so far as they serve to illustrate the meaning of the language which the Legislature has chosen to employ: and it is obvious on this principle that when the legal, ordinary and grammatical sense of the language is unambiguous, these considerations are wholly irrelevant—they cannot alter that sense, which must prevail. We must take the law as we find it, and if it be unjust or inconvenient, we must leave it to the constitutional authority to amend it" (f). ["Where the language of an Act is clear and explicit, we must give effect to it, whatever may be the consequences, for in that case the words of the statute speak the intention of the Legislature" (g).] In other words, if the language used by the Legislature is precise and unambiguous, a Court of law at the present day has only to expound the words in their natural and ordinary sense. "*Verbis plane expressis omnino standum est*" (h). In *M. Cowan v. Baine*, (1891) App. Cas. 401, 409, Lord Watson laid down the canon as follows:—"It is said that for some reason the primary and natural meaning of the words is to be extended. . . . I am at a loss to see why. I think an Act of Parliament, an agreement, or other authoritative document, ought never to be dealt with in this way, unless for a cause amounting to a necessity or approaching it. It is to be remembered that the authors of the document could always have put in the necessary words if they had thought fit. If they did not,

(c) In *Tasmania v. Commonwealth* (1904), 1 Australia C. L. R. 329, on a question as to the meaning of the constitution of the Australian Commonwealth, Griffith, C.J., said (at p. 358): "I do not think that it can be too strongly stated that our duty in interpreting a statute is to administer the law according to the intention expressed in the statute itself. In this respect the Constitution differs in no way from any Act of the Commonwealth or of a State."

(d) Rule declared by the judges in advising the House of Lords in the *Sussex Peerage Claim* (1844), 11 Cl. & F. 85, 143; 6 St. Tr. N. S. 79; and accepted by the Judicial Committee in *Cargo ex Argos* (1872), L. R. 5 P. C. 134, 153. Cf. *Tasmania v. Commonwealth* (1904), 1 Australia C. L. R. 329, 339.

(e) Lord Thring, "Practical Legislation" (ed. 1902), p. 52.

(f) *Garland v. Carlisle* (1837), 4 Cl. & F. 693, 705, Coleridge, J.

(g) *Warburton v. Loveland* (1831), 2 D. & Cl. (H. L.) 489.

(h) *The St. Cloud* (1863), Bro. & Lush. 17, Dr. Lushington.

it was either because they thought of the matter and did not, or because they did not think of the matter. In neither case ought the Court to do it. In the first case, it would be to make a provision opposed to the intention of the framers of the document; in the other case, to make a provision not in the contemplation of these framers." And in *Hornsey L. B. v. Monarch Investment Building Society* (1889), 24 Q. B. D. 1, 5, Lord Esher said: "An Act of Parliament is to be construed according to the ordinary meaning of the words in the English language as applied to the subject-matter, unless there is some very strong ground, derived from the context or reason, why it should not be so construed." Lindley, L.J., added (at p. 9): "Where an expression is ambiguous, in considering what construction it is proper to put upon it we must look a little at the object of the Act and the consequences of the rival construction. If one construction produces consequences in conformity with the scope of an enactment, and with the consequences which follow from the constructions put upon other enactments of the same sort, while the rival construction introduces a startling novelty, no lawyer would adopt the latter construction" (i).

(a) This rule is expressed in various terms by different judges. The epithets "natural," "ordinary," "literal," "grammatical," and "popular" are employed almost interchangeably, but their indiscriminate use leads to some confusion, and probably the term "primary" (k) is preferable to any of them, if it be remembered that the primary meaning of a word varies with its setting or context, and with the subject-matter to which it is applied; for reference to the abstract meaning of words, if there be any such thing, is of little value in interpreting statutes.

Various modes of expressing the rule.

(b) In *Salomon v. Salomon*, (1897) App. Cas. 22, 38, Lord Watson thus indicated the nature and limits of the canon: "'Intention of the Legislature' is a common but very slippery phrase, which, popularly understood, may signify anything from intention embodied in positive enactment to speculative opinion as to what the Legislature probably would have meant, although there has been an omission to enact it. In a Court of law or equity, what the Legislature intended to be done or not to be done can only be legitimately ascertained from what it has chosen to enact, either in express words or by reasonable and necessary implication" (l). [After expounding the enactment in accordance with these rules, it only remains to enforce and administer the law as it is found to be, notwithstanding the consequences, international,

Intention of Legislature not to be speculated on.

(i) [This accords with the views expressed by Lord St. Leonards in *Myers v. Perigal* (1852), 2 De G. M. & G. 619, and approved by Lord Cairns in *Brook v. Bailey* (1868), L. R. 3 Ch. App. 673.]

(k) See Elphinstone, Interpretation of Deeds, ch. iv.

(l) In a recent New Zealand case, the rule has been thus shortly put: "The object of an Act and its intent, meaning, and spirit can only be ascertained from the terms of the Act itself": *Pitches v. Kenny* (1903), 22 N. Z. L. R. 818, 819, Williams, J.

political (*m*), or otherwise (*n*); and notwithstanding that it may be a very generally received opinion that the particular enactment in question "does not produce the effect which the Legislature intended" (*o*), or "might with advantage be modified" (*p*). "If," said Pollock, C.B., in *Miller v. Salomons* (1852), 7 Ex. 475, 560, "the language used by the Legislature be clear and plain, we have nothing to do with its policy or impolicy, its justice or injustice (*q*), its being framed according to our views of right or the contrary; we have nothing to do but to obey it, and administer it as we find it; and I think to take a different course is to abandon the office of judge and assume that of a legislator." "I do not understand," said Lord Redesdale in the case of *The Queensberry Leases* (1819), 1 Dow. (H. L.) 491, 497, "what right a court of justice has to entertain an opinion of a positive law upon any ground of political expediency. The Legislature is to decide upon political expediency; and if it has made a law which is not politically expedient, the proper way of disposing of that law is by an Act of the Legislature, and not by the decision of a court of justice." [And although it is allowable (*r*), and sometimes desirable, for a Court which is called upon to interpret a statute to acquaint itself with the history of the statute, and of the circumstances under which it was passed; and even to compare it with any similar statutes passed in other countries, and to examine decisions of British and even of foreign Courts upon similar statutes, still it must be borne in mind, as Pollock, C.B., said in *Att.-Gen. v. Sillem* (1863), 2 H. & C. 508: "If a statute, in terms reasonably plain and clear, makes what the defendants have done a punishable offence within the statute, we want not the assistance which may be derived from what eminent statesmen have said or learned jurists have written . . . we want not the decisions of American Courts to see whether the case before us is within the statute."]

(*m*) [In *Att.-Gen. v. Sillem* (1863), 2 H. & C. 431, 510, Pollock, C.B., said: "We have nothing to do with the political consequences of our decision, or the dissatisfaction which it may create in any quarter anywhere, and I cannot help expressing my regret, not unmixed with some surprise, that the learned Attorney-General has more than once adverted to the consequences of our holding that what the defendants have done is not contrary to our municipal law."]

(*n*) [In *Hindmarch v. Charlton* (1860), 8 H. L. C. 167, Lord Campbell said, in holding a will invalid which had not been executed in accordance with the statute: "I may honestly say that we have a strong inclination in our minds to support the validity of the will in dispute, which the parties *bonâ fide* made, as they believed, according to law. But we must obey the directions of the Legislature. . . ."]

(*o*) *Preston v. Buckley* (1870), L. R. 5 Q. B. 391, 394, Blackburn, J.

(*p*) *General Iron Co. v. Moss* (1861), 15 Moore, P. C. 131.

(*q*) Or even "its absurdity": *Fates v. R.* (1885), 14 Q. B. D. 660, Cotton, L.J.

(*r*) *Infra*, p. 119: "What sources outside the statute may be had recourse to for throwing light on its meaning." See also rules in *Heydon's case, infra*, p. 95.

And even in a doubtful case search for the supposed intention of the Legislature must not be pressed too far.

Lord Herschell in *Cox v. Hakes* (1890), 15 App. Cas. 506, 528, said: "It is not easy to exaggerate the magnitude of this change; nevertheless, it must be admitted that, if the language of the Legislature, interpreted according to the recognised canons of construction, involves this result, your lordships must frankly yield to it, even if you should be satisfied that it was not in the contemplation of the Legislature." And in *Vestry of St. John, Hampstead, v. Coffin* (1886), 12 App. Cas. 1, 6, Lord Halsbury said: "Doubtless there are cases in which, when in the instrument itself, whether a will, or a contract, or a statute, evidence may be discovered of the general intention of the framer, and of the general meaning, or what has been called the governing sense, in which the words or provisions are to be understood, you may occasionally modify the language you have to construe with reference to that general intention which has been so ascertained." He added: "In this case I confess myself wholly unable to discover any general intention on which I can rely as governing or modifying the language which the Legislature has used. It is obvious that two sets of learned judges have construed these sections differently, according as they have regarded the object which the Legislature had in view; and each of them has in turn pointed out the absurdities which would be the result of the opposite construction to that which their lordships have favoured. That seems to me to show that at all events it is difficult, if not impossible, to obtain any such key to the statute as is to be found in its ascertained governing intention. The result of that appears to me to be that your lordships should place upon it that construction which every Court is bound to place upon any instrument whatsoever, namely, that if there is nothing to modify, nothing to alter, nothing to qualify the language which the instrument contains, it must be construed in the ordinary and natural meaning of the words and sentences."

(c) [From this rule several consequences follow: first, that no statutory enactment (s) may be treated as null and void] or unconstitutional (t). [This was pointed out by Blackstone, who says (1 Comm. 91): "If Parliament would positively enact a thing to be done which is unreasonable, there is no power in the

No statute may be treated as void.

(s) As to colonial laws, see 28 & 29 Vict. c. 63, s. 3, and *post*, Part II. ch. ix.

(t) The expression "unconstitutional," as applied to an English Act of Parliament, merely means that the Act in question, as, for instance, the Irish Church Act, 1869, is, in the opinion of the speaker, opposed to the spirit of the English Constitution: it cannot mean (as it might if applied to a French or an American Act) that the Act is either a breach of law or void. (Dicey, *Law of the Constitution* (6th ed.), 464.) It is sometimes argued that the Acts of Union are not amendable: but both have been amended. As to the constitutional powers of the law-making bodies in India, see *Bell v. Madras Municipal Commissioners* (1902), 25 Madras, 457, 474, Bhashyam Ayyangar, J.; Ilbert, *Govt. of India*, 223, 226.

ordinary forms of the Constitution that is vested with authority to control it." There are, indeed, *dicta* in the books which go to show that certain judges have considered that Acts of Parliament may, under certain circumstances, be declared to be and treated as null and void. Thus in *Dr. Bonham's case* (1610), 8 Co. Rep. 118 *a*, Coke says that "when an Act of Parliament is against common right and reason, or repugnant, or impossible to be performed, the common law will control it and adjudge such Act to be void" (*u*). There is, however, no instance of any British (*x*) statute having ever been declared null and void, or (as the Judicial Committee put it in *Logan v. Burslem* (1842), 4 Moore, P. C. 284, 297) "not binding, if it is contrary to reason"; for, as it is stated in Blackstone's Commentaries, i. 91, "the examples usually alleged . . . do none of them prove that where the main object of a statute is unreasonable the judges are at liberty to reject it, for that were to set the judicial power above that of the Legislature, which would be subversive of all government." The very reverse, in fact, was held in *Lee v. Bude, &c. Rail. Co.* (1871), L. R. 6 C. P. 576, 580, where it was argued that certain Acts of Parliament had been obtained by inserting in them false recitals. "I would observe," said Willes, J., "that these Acts of Parliament are the law of the land, and we do not sit here as a court of appeal from Parliament. It was once said (*y*) that if an Act of Parliament were to create a man a judge in his own cause, the Court might disregard it. That dictum, however, stands as a warning rather than as an authority to be followed. If an Act of Parliament has been obtained improperly, it is for the Legislature to correct it by repealing it; but so long as it exists as law the Courts are bound to obey it." And the same view was expressed by the Judicial Committee in *Labrador Co. v. Reg.* (*z*).

Construction  
*ut res magis  
valeat quam  
percat.*

(*d*) A statute, even more than a contract, must be construed, *ut res magis valeat quam pereat*, so that the intentions of the Legislature may not be treated as vain or left to operate in the air (*a*). Even rules of international law are to be regarded merely as aiding to a construction of ambiguous enactments, and not as controlling British Acts. The judges may not pronounce an Act *ultra vires* as contravening international law, but may recoil, in case of ambiguity, from a construction which would involve a breach of the ascertained and accepted rules of international law (*b*).

(*u*) See also *Day v. Savadge* (1615), Hob. 87; *City of London v. Wood* (1700), 12 Mod. 687; and *Duchess of Hamilton v. Flectwood* (1714), 10 Mod. 115, and notes to the case above cited.

(*x*) Statutes of the United States or British colonies may be declared by judges to be *ultra vires* by reference to their Constitutions; *vide post*, Pt. II. ch. ix.

(*y*) In *Day v. Savadge* (1615), Hob. 87, where it is laid down that "even an Act of Parliament made against natural equity, as to make a man a judge in his own case, is void in itself."

(*z*) (1893) A. C. 104. Quoted *ante*, p. 42.

(*a*) *Curtis v. Stovin* (1889), 22 Q. B. D. 512, 517, Bowen, L.J.

(*b*) See *post*, Part II., chap. viii.

(e) [A second consequence of this rule is that a statute may not be extended to meet a case for which provision has clearly and undoubtedly not been made] (c). The judges may not wrest the language of Parliament even to avoid an obvious mischief. When an Act contains special reference to, or saving of, another Act, and omits all allusion to a third Act *in pari materia*, it is safer to presume that the omission is deliberate than that it is due to forgetfulness or made *per incuriam*. Even if the omission flows from forgetfulness, those who claim the benefit of the omitted Act cannot succeed (d). It would also seem that omission, even *per incuriam*, to repeal or preserve inconsistent enactments will not save the earlier enactments. The authorities on this subject are numerous and unanimous. "No case can be found to authorise any Court to alter a word so as to produce a *casus omissus*," said Lord Halsbury in *Mersey Docks v. Henderson* (1888), 13 App. Cas. 595, 602; [and a like opinion was given in *Crawford v. Spooner* (1846), 6 Moore, P. C. 9: "We cannot aid the Legislature's defective phrasing of an Act, we cannot add and mend, and, by construction, make up deficiencies which are left there." In other words, the language of Acts of Parliament, and more especially of modern Acts, must neither be extended beyond its natural and proper limits, in order to supply omissions or defects (e), nor strained to meet the justice of an individual case (f). "If," said Lord Brougham, in *Gwynne v. Burnell* (1840), 7 Cl. & F. 696, "we depart from the plain and obvious meaning on account of such views (as those pressed in argument on 43 Geo. 3, c. 99), we do not in truth construe the Act, but alter it. We add words to it, or vary the words in which its provisions are couched. We supply a defect which the Legislature could easily have supplied, and are making the law, not interpreting it. This becomes peculiarly improper in dealing with a *modern* statute, because the extreme conciseness of the ancient statutes was the only ground for the sort of legislative interpretation frequently put upon their words by the judges. The prolixity of modern statutes, so very remarkable

*Casus omissus*  
not to be  
created or  
supplied.

(e) For good instances of *casus omissi* (which were afterwards remedied by the Legislature), see *R. v. Arnold* (1864), 5 B. & S. 322, and *R. v. Deinton* (1864), 13 B. & S. 321. The mere fact that some certain point was not present to the mind of the draftsman when he drew the Act does not necessarily constitute that point a *casus omissus*. "Whether," said Bramwell, L.J., in *Ex parte Welchman* (1879), 11 Ch. D. 48, 55, "the draftsman had it in his mind or not is another question; but very often Courts have to discover what provision has been made for the happening of an event which was not in the contemplation of the person who drew the Act."

(d) See *Re Williams* (1887), 34 Ch. D. 573, 582, North, J.

(e) [Even "if the language used is incapable of a meaning, we cannot supply one": *Green v. Wood* (1845), 7 Q. B. 178, 185, Denman, L.C.J.] Cf. *Pinkerton v. Easton* (1873), L. R. 16 Eq. 490, 492, Selborne, L.C.

(f) [In *Whitely v. Chappell* (1868), L. R. 4 Q. B. 149, Hannen, J., said: "It would be wrong to strain words to meet the justice of the present case, because it might make a precedent, and lead to dangerous consequences in other cases." Cf. *Scott v. Legg* (1877), 10 Q. B. D. 236, 238, James, L.J.]

of late, affords no grounds to justify such a sort of interpretation." In *Jones v. Smart* (1785), 1 T. R. 44, the question was whether a doctor of physic in a Scotch university was qualified to kill game under 22 & 23 Car. 2, c. 25, which enacted "that every person . . . other than the son of an esquire, or other person of higher degree . . . is declared to be a person by the law of this realm not allowed to have any guns . . . for taking game." Amongst other arguments for proving that a Scotch doctor of physic was qualified, it was contended that the Legislature could not have intended to exclude such a person. "Be that as it may," said Buller, J., in his judgment, "we are bound to take the Act of Parliament as they have made it; a *casus omissus* can in no case be supplied by a Court of law, for that would be to make laws." As a general rule, as Blackburn, J., pointed out in *R. v. Cleworth* (1864), 4 B. & S. 927, 934, if it appears that the class or thing which it is sought to bring within the Act (under consideration) was known to the Legislature at the time when the Act was passed, and that class is omitted, "it must be supposed to have been omitted intentionally." It makes no difference if it appears that the omission on the part of the Legislature was a mere oversight, and that without doubt the Act would have been drawn otherwise had the attention of the Legislature been directed to the oversight at the time the Act was under discussion. Thus, in *Lane v. Bennett* (1836), 1 M. & W. 70, it being admitted that Ireland was a place beyond the seas within the meaning of 4 & 5 Anne, c. 3, s. 19, which enacted that if a defendant shall be beyond the seas at the time a cause of action accrued, the plaintiff should be at liberty to sue him within a certain specified time after his return, it was contended that 3 & 4 Will. 4, c. 42, s. 7, which enacted that Ireland should not be deemed to be beyond the seas so far as related to certain statutes (but without naming this statute of Anne), ought to be held to extend to this statute of Anne. "The great probability," said the Court, "is that the omission to name the statute of Anne is an oversight, but even if we were quite satisfied that it was so, we could not supply the defect" (g).] In *Att.-Gen. v. Noyes* (1881), 8 Q. B. D. 125, 139, Jessel, M.R., thus stated the rule: "It is the duty of judges in all cases to give fair and full effect to Acts of Parliament, without regard to the particular consequence in the special case, and not to indulge in conjecture as to what the Legislature would have done if a particular case had been presented to their notice. We first of all have to see what the Act of Parliament says, and then to apply it to the case; and I do not think it is a fair criticism on an Act of Parliament to say that the result will be unfair, or that it will result in making people pay duty who ought not to pay duty." An

(4 Anne, c. 16,  
Ruffhead.)

(g) [*Cf. N. E. Rail. Co. v. Leadgate L. B.* (1870), L. R. 5 Q. B. 157, 161, Cockburn, L.C.J.]



extreme instance of the adoption of this rule is given in *R. v. Dyott* (1882), 9 Q. B. D. 47. The Act 17 Geo. 2, c. 3, s. 1, required publication of a rate in church as a condition precedent to its validity. 7 Will. 4 & 1 Vict. c. 45, s. 2, substituted for publication in church or chapel publication by affixing the notice on or near the door of the church or chapel. 20 Vict. c. 19, s. 1, made all extra-parochial places parishes for poor-law purposes. Among the places made parochial by this Act was Hopwas Hays, in Staffordshire, which contained neither church nor chapel, and only one house, a gamekeeper's lodge. The validity of a poor rate made for the parish fell into dispute, and the Queen's Bench Division decided that as the provisions of 17 Geo. 2, c. 3, s. 1, and 7 Will. 4 & 1 Vict. c. 35, s. 2, could not be complied with, no valid rate could be made. Grove, J., said (at p. 49): "It would be making legislation, and not interpreting the language of the statutes, were the Court to say that the rate could be levied without any previous publication. It may be that where the language of a statute is merely directory, and it is impossible to follow the direction, the Court would give effect to the doctrine of *cy-près*, and say that the direction should be carried out as nearly as possible. The maxim, *Nemo tenetur ad impossibilia*, would then apply. But in this case the words of the statute are not directory, but positive and prohibitory. Very likely a provision for publishing a rate in places where there is no church or chapel was omitted from these statutes through a slip, but if so, it is for the Legislature to remedy it" (*h*). And North, J., in the same case said (p. 51): "The question being whether the statute is to be treated as one in which notice has been deliberately dispensed with or has escaped observation, I come to the conclusion that it has escaped observation. It is a *casus omissus*, from which no inference can be drawn against the necessity of notice."

(f) [A third consequence of this rule is that the High Court at the present day (*i*) declines to interfere for the assistance of persons who seek its aid to relieve them against express statutory provisions. This was clearly pointed out by Mellish, L.J., in *Edwards v. Edwards* (1876), 2 Ch. D. 291, 297. "If," said he, "the Legislature says that a deed shall be 'null and void to all intents and purposes whatsoever,' how can a Court of equity say that in certain circumstances it shall be valid? The Courts of equity have given relief on equitable grounds from provisions in old Acts of Parliament, but this has not been done in the case of modern Acts, which are framed with a view to equitable as well

Courts will not relieve against express statutory provisions.

(*h*) In *Finney v. Godfrey* (1870), L. R. 9 Eq. 356, James, V.-C., read the command as conditional on the existence of a church or chapel.

(*i*) [In *Lindsay v. Lynch* (1804), 2 Sch. & L. 5, Lord Redesdale said that repeated attempts had been made "to put a Court of equity in such a situation that, without departing from its rules, it feels itself obliged to break through the statute. It is, therefore, absolutely necessary to make a stand, and not carry the decisions further."]

as legal doctrines.”] “Acts of Parliament,” said Holker, L.J., in *Gibbs v. Guild* (1882), 9 Q. B. D. 59, 75, “are omnipotent, and are not to be got rid of by declarations of Courts of law or equity.” [In *Curtis v. Perry* (1802), 6 Ves. 739, the plaintiffs prayed that certain ships which stood registered in the name of one Nantes should be declared to be his separate property, although it appeared that the ships had always been treated as part of the property of a firm of which he was a member. Lord Eldon held that the plaintiff’s prayer must be complied with, because the statutory enactment was precise and clear to the effect that every ship was to be considered as the property of the person in whose name it stood registered, and that if a transfer was made of a ship, it must be made in a prescribed form. As the requirements of the Act had not been complied with, the Court could not interfere.]

But while Courts of justice cannot dispense with or override the express provisions of a statute by construing its express terms as subordinate to considerations of common law or equity, there are certain cases in which it has been held—

- (1) That people may contract themselves out of rights given them by statute, but not in terms made indefeasible (*k*);
- (2) That people may contract not to set up a defence given by statute (*l*);
- (3) That a person may waive or be estopped by his conduct from setting up a defence given him by statute (*m*).

There is very little authority for any of these propositions, and it is submitted that they are valid, if at all, only in cases where the statute merely deals with procedure or gives a private right which may be renounced, and are not applicable as against a specific mandatory or declaratory enactment (*n*).

29 Chas. 2,  
c. 3.

It has been often said, with reference to the Statute of Frauds, that “Courts of equity will not permit the statute to be made an instrument of fraud.” “By this,” said Lord Selborne in *Alderson v. Maddison* (1883), 8 App. Cas. 467, 474, “it cannot be meant that equity will relieve against a public statute of general policy in cases admitted to fall within it, and I agree with an observation made by Cotton, L.J., in *Britain v. Rossiter*

(*k*) Contracting out is forbidden in the case of property tax (5 & 6 Vict. c. 35), the occupier’s right to take ground game (*Sherrard v. Gascoigne*, (1900) 2 Q. B. 279), the landlord’s liability to his tenants of certain classes of dwellings (Housing of the Working Classes Act, 1903 (3 Edw. 7, c. 39, s. 12)), and the compensation charge under the Licensing Act, 1904 (4 Edw. 7, c. 23, s. 3 (3)): and under the Arbitration Act, 1883 (46 & 47 Vict. c. 61, s. 55).

(*l*) See *Wright v. Carter*, 10 Q. B. 240; *East India Co. v. Paul* (1849), 7 Moore, P. C. 85; *Supple v. Cunn* (1858), 9 Ir. Ch. R. 1.

(*m*) *Wilson v. McIntosh*, (1894) A. C. 129; *Taylor v. Clemson* (1844), 11 Cl. & F. 610, 643. In *Mackenzie v. Lord Powis* (1737), 7 Brown, P. C. 282, the H. L. restrained the respondent from pleading the Statute of Limitations in an action at law to recover shares deposited with him in France by the appellant.

(*n*) These cases are distinct from those under which the Courts do not give the benefit of certain statutes unless they are specially pleaded. See *ante*, p. 47.

(1882), 11 Q. B. D. 123, that this summary way of stating the principle (however true it may be when properly understood) is not an adequate explanation either of the precise grounds or of the established limits of the equitable doctrine of part performance." He went on to point out—

- (1) That both at law (*o*) and in equity, sect. 4 of the Statute of Frauds had been held not to avoid parol contracts, but only to bar their remedies, a view to which effect has been given by the Rules of Court requiring the statute to be specially pleaded; and
- (2) That in the decisions in equity resting upon part performance, the defendant is charged on the equities arising out of the acts done in execution of the contract, and not within the meaning of the statute upon the contract itself.

It is only with reference to a few statutes that attempts have been made at equitable construction, and these attempts are justifiable only so far as they do not contravene the old rule of the Court of Chancery, which relieved from erroneous construction put upon statutes by Courts of law, only under circumstances thus stated by Lord Hardwicke in *Bassett v. Bassett* (1744), 3 Atk. at p. 206: "There are several cases where, in consequence of an Act of Parliament, this Court will intervene. As where a new Act of Parliament is made to alter the law, and the judges are formal in adhering to rules of [the common] law, and will not construe according to the words and intention of the Act, there the Court will take it up and will give remedy here, though it is the business of judges to mould their practice so as to make it conformable to the Legislature."

(*g*) [A fourth consequence of this rule is that a Court of law cannot interfere to prevent a mere evasion (*p*) of an Act of Parliament.] The word "evade" is ambiguous and has ordinarily two Evasion of a statute.

(*o*) *Crosby v. Wadsworth* (1805), 6 East, 602, 611.

(*p*) "There is always an ambiguity," said Lindley, L.J., in *Forkshire Railway Wagon Co. v. Mochrie* (1882), 21 Ch. D. 318, "about the expression 'evading an Act of Parliament'; in one sense you cannot evade an Act, that is to say, the Court is bound so to construe every Act as to take care that that which is really prohibited may be held void. On the other hand, you may avoid doing that which is prohibited by the Act, and you do something else equally advantageous to you which is not prohibited by the Act." Again, in *Edwards v. Hall* (1856), 25 L. J. Ch. 84, Lord Cranworth said: "I never understood what is meant by an evasion of an Act of Parliament; either you are within the Act or you are not within it; if you are not within it you have a right to avoid it, to keep out of the prohibition." And in *Jefferies v. Alexander* (1860), 8 H. L. C. 594, at p. 637, Willes, J., said: "To say that what was done is an evasion of the law is idle, unless it means that, though in apparent accordance with it, it really was in contravention of the law." See per Lord Campbell, at p. 646. "The word 'evasion,'" said Grove, J., in *Att.-Gen. v. Noyes* (1881), 5 Q. B. D. 125, 133, "may mean either of two things. It may mean an evasion of the Act by something which, while it evades the Act, is within the sense of it, or it may mean an evading of the Act by doing something to which the Act does not apply."

meanings, one suggesting underhand dealing, the other intentional avoidance of something disagreeable (*q*). "A person may go to a solicitor and ask him how to keep out of an Act of Parliament—how to do something which does not bring him within the scope of it. That is evading in one sense, but there is nothing illegal in it. The other is when a man goes to his solicitor and says 'tell me how to escape from the consequences of the Act of Parliament although I am brought within it.' That is an act of quite a different character" (*r*). With respect to an Act of Parliament, evasion is used as meaning something which does not amount to a positive breach of, or fraud upon, the Act. "There must, in every law, be marginal cases which come very near the point at which the statute can be avoided; and the persons intending to avoid the operation of a statute can always succeed by doing it directly. If a man with a mortal disease, although he knows that he cannot live six months, chooses to convey his property to his heirs expectant, he may do so, and they will pay no succession duty. So, again, an old man may do so. He may hand over his property by a *bond fide* conveyance" (*s*). [Such a mode of avoiding the effect of a statute was described by Grove, J., in *Ramsden v. Lupton* (1873), L. R. 9 Q. B. 17 at p. 32, as "getting away from the remedial operation of the statute while complying with the words of the statute." "An Act evaded is not an Act infringed" (*t*), and an arrangement which is designed "to defeat the intentions of the Legislature, and to enable a person to accomplish indirectly what he could not under the Act in question have done directly," will not necessarily be held on that account invalid by Courts of law (*u*).] It has always been the pride of a competent conveyancer to be able, when required, to drive a coach and four, or six, through any Act of Parliament. [In *Smale v. Burr* (1872), L. R. 8 C. P. 64, it appeared that a bill of sale had been given

(*q*) *Simms v. Registrar of Probates*, (1900) A. C. 323, 334, Lord Hobhouse, a decision of the Judicial Committee on a South Australian Revenue Act.

(*r*) *Bullivant v. Att.-Gen. for Victoria*, (1901) A. C. 196, 207, Lord Lindley, a decision of the H. L. on a Revenue statute of Victoria.

(*s*) *Att.-Gen. v. Noyes* (1881), 8 Q. B. D. 125, 137, Grove, J. See also per Jessel, M.R., at p. 140.

(*t*) [In *Ramsden v. Lupton* (1873), L. R. 9 Q. B. 28, Bramwell, B. In the same case, at p. 30, Keating, J., said: "If that were the enactment, the Act would have been *infringed*, not *evaded*, but *infringed*," &c. In *Ritchie v. Smith* (1848), 6 C. B. 100, Williams, J., describes an agreement as one "by which the plaintiff co-operated with other persons for the purpose of contravening and *evading* the provisions of the Act," using the word "*evade*" as synonymous with "*infringe*"; and in *Re Meade* (1876), 3 Ch. D. 119, 121, Bacon, V.-C., made a similar use of the word. The former seems the accepted meaning of the term.]

(*u*) [In *Barton v. Mair* (1874), L. R. 6 P. C. 134, 139, an arrangement which was sought to be enforced was described in these words by the Chief Justice of the Supreme Court of New South Wales, and on that account set aside by that Court; but this decision was reversed by the Judicial Committee.] In *Davis v. Stephenson* (1890), 24 Q. B. D. 529, a deliberate and scarcely disguised attempt to evade a penal Act was held to have succeeded.

by one Price to the plaintiff, but, instead of registering it before the expiration of the twenty-one days allowed for that purpose by the Bills of Sale Act, 1854 (17 & 18 Vict. c. 36), another bill of sale was given by Price to the plaintiff in exchange for the first. This was done fifteen or sixteen times, and ultimately the bill of sale last given was registered before the expiration of twenty-one days from the day on which it (the last bill) had been given. The plaintiff then sued the defendant, who had taken Price's goods in execution. The defence was that the transaction was fraudulent, and ought not to be upheld. It was held, however, that, notwithstanding that the transaction was clearly of a most fraudulent character, the requirements of the Act of 1854 had been complied with, and that consequently, although the spirit of the Act had been evaded, the bill of sale must be held to be valid. "I should have been extremely glad," said Denman, J., "if I could have found an authority which would have enabled us to defeat this bill of sale. But I find none."] The Courts will, however, always examine into the real nature of the transaction by which it is sought to evade an Act: *Re Watson* (1890), 25 Q. B. D. 27. The Licensing Acts and the Bills of Sale Acts are daily evaded with success. But this can only be effected by acts which are clearly *casus omissi*, having regard to the meaning of the enactment as ascertained by the Courts, and not of course by individual judgment; for "Parliament would legislate to little purpose," said Lord Macnaghten (x), "if the objects of its care might supplement or undo the work of legislation by making a definition clause of their own. People cannot escape from the obligation of a statute by putting a private interpretation on its language."

(h) [As Abbott, C.J., said in *Fox v. Bishop of Chester* (1824), 2 B. & C. 635, 655, it is a "well-known principle of law that the provisions of an Act of Parliament shall not be evaded by shift or contrivance"; consequently, as Lord Coleridge said in *Wright v. Davies* (1876), 1 C. P. D. 638, 646, if a contract be "framed so as entirely to defeat the object of an Act of Parliament," such a contract, "although not within its express prohibition," might very well be held to be impliedly forbidden by it. We accordingly find that a Court of law will not tolerate such an evasion of an Act of Parliament as amounts to a positive "fraud upon the Act," such an evasion being, as Lord Eldon described it in *Fox v. Bishop of Chester* (1829), 1 Dow. & Cl. (H. L.) 416, 429, "a fraud on the law or an insult to an Act of Parliament." The expression "a fraud upon an Act" is used with reference to a transaction "which," as Lord Coleridge said in *Ramsden v. Lupton* (1873), L. R. 9 Q. B. 17, 24, "no Court would give effect to, because it had no legal foundation from the beginning. It is rather difficult," continued he, "to put into any other form

Fraud upon  
an Act.

(x) In *Netherseal Co. v. Bourne* (1889), 14 App. Cas. 228, 247.

[of words] what exactly is meant by an arrangement that is a fraud upon an Act of Parliament of this sort. I perfectly understand the expression, and it may be a very legitimate one to use with regard to the bankruptcy laws, which are passed for different purposes, and an attempt to evade which, while complying with the letter of the statute, has been held by the Courts, and has repeatedly been decided to be, not a successful evasion of the statute, but such a colourable attempt to evade the statute as the Court would describe as a fraud upon it." But the phrase "fraud upon an Act" is somewhat unfortunate, and [there is, as Turner, L.J., said in *Alexander v. Brame* (1855), 7 De G. M. & G. 525, 539, "perhaps no question of law more difficult to determine than the question, what particular acts, not expressly prohibited, shall be deemed to be void as being against the policy of a statute. It is no doubt the duty of the Courts so to construe statutes as to suppress the mischief against which they are directed, and to advance the remedy which they are intended to provide; but it is one thing to construe the words of a statute, and another to extend its operation beyond what the words of it express." This question has often arisen in cases which turned upon the Statutes of Mortmain. "Prohibitory statutes," said Lord Cranworth in *Philpott v. St. George's Hospital* (1857), 6 H. L. C. 338, 348 (a case upon the Statutes of Mortmain), "prevent you from doing something which formerly it was lawful for you to do; and, whenever you find that anything done is substantially that which is prohibited, I think it is perfectly open to the Court to say that it is void, not because it comes within the spirit of the statute, or tends to effect the object which the statute meant to prohibit, but because by reason of the true construction of the statute it is the thing, or one of the things, actually prohibited." And if a statute has been passed for some one particular purpose, a Court of law will not countenance any attempt which may be made to extend the operation of the Act to something else which is quite foreign to its object and beyond its scope. Thus in *Macbeth v. Ashley* (1874), L. R. 2 H. L. (Sc.) 352, it appeared that 25 & 26 Vict. c. 35, gave magistrates the power to close public-houses "in any particular locality" before the statutory hour; and it was held that, if the magistrates, under the guise of exercising this power, were to order the public-houses to be closed earlier, not merely in one particular locality, but in portion after portion of the whole district, until eventually all the public-houses in the whole district had been closed at the earlier hour, this would be, as Lord Cairns said, "adopting a course for the purpose of doing what I must describe as evading an Act of Parliament, and your lordships would not be prepared to sanction, but would discountenance and prevent, the exercise of a power so used" (y).]

(y) [An illustration of the way in which the intention of an Act of Parliament may be successfully evaded without contravening the letter of the enactment

2. [The rule that the language used by the Legislature must be construed in its natural and ordinary sense requires some explanation. The sense must be that which the words used ordinarily bore at the time when the statute was passed.] Said Lord Esher, M.R., in *Clerical, &c. Assurance Co. v. Carter* (1889), 22 Q. B. D. 444, 448: "There has been a long discussion of various puzzling matters in relation to the provisions of the Income Tax Acts, but, after all, we must construe the words of schedule D according to the ordinary canon of construction; that is to say, by giving them their ordinary meaning in the English language as applied to such a subject-matter, unless some gross and manifest absurdity would be thereby produced." [Thus, the word "marriage," as used in an English statute, means the contract into which a man and woman enter in this country, and does not, therefore, include polygamy. "There is no magic in a name," said Lord Penzance (Sir James Wilde) in *Hyde v. Hyde* (1866), L. R. 1 P. & M. 130, 133 (a case in which the validity of a Mormon marriage was discussed), "and if the relation there (in Utah) existing between a man and a woman is not the relation which in Christendom we recognise and intend by the words 'husband' or 'wife,' but another and altogether different relation, the use of a common term to express these two different relations will not make them one and the same, though it may tend to confuse them to a superficial observer."] And even with reference to marriages contracted abroad by British subjects, the term means monogamous marriages, whether Christian or not (z).

Terms to be read in their English meaning at date of passing of Act.

In applying this rule to colonial statutes penned in English, it must be modified so as to give effect to any difference between English and colonial usage as to the meaning attached to a word or phrase. For the term "marriage" in an Indian or South African statute might include polygamous unions, having regard to the recognition of such unions in those possessions (a).

Rule modified as to colonial Acts.

was afforded by the appointment, in November, 1871, of Sir Robert Collier as a member of the Judicial Committee. It was enacted by 34 & 35 Vict. c. 91, s. 1 (now repealed), that Her Majesty might, within twelve months after the passing of the Act, appoint four persons to act as members of the Judicial Committee of the Privy Council, but that any persons so appointed must be specially qualified as follows—that is to say, must, at the date of their appointment, be or have been judges of one of Her Majesty's Superior Courts at Westminster. Sir Robert Collier, who, at the time of the passing of the Act, was Attorney-General, was in November, 1871, made a judge of the Court of Common Pleas, and one week after his appointment, and without ever having acted as judge, he was appointed under the above-mentioned Act as a member of the Judicial Committee. It was clear that this was a valid appointment, and no question was ever raised about it in any Court of law, but the Legislature, in passing the Act, cannot be supposed to have contemplated the use to which it would be put by the Government. In the House of Commons a motion condemning the appointment was lost by 241 to 268 (Hans. 3rd ser. 209, p. 755), and in the House of Lords by 87 to 88 (Hans. 3rd ser. 209, p. 461).]

(z) See *Bethell's case* (1887), 38 Ch. D. 220, *Stirling, J.*; *Brinkley v. Att.-Gen.* (1890), 15 P. D. 76, *Hannen, P.*

(a) See *Peterswald v. Bartley* (1904), 1 Australia C. L. R. 497, as to the meaning of "duties of excise" in Australia.

Many terms are used in United States and colonial statutes in a sense different from that attached to them in England (*b*). And in the construction of the British North America Act, 1867, some divergence has arisen between the Canadian Courts and the Privy Council as to what is meant by "indirect taxation" (*c*). Likewise where the colonial statute is penned in French or Dutch as the sole or concurrent language of legislation, it must be read by reference to the colonial dialect of those languages, and not to the mother tongue, in the case of any divergence between the two.

*Contemporanea expositio.* The rule as to *contemporanea expositio* was first laid down by Lord Coke (2 Inst. ed. Thomas, p. 2, n. (1)), in speaking of Magna Charta, in the following terms:—"This and the like were the forms of ancient Acts and graunts, and the ancient Acts and graunts must be construed and taken as the law was holden at that time when they were made." The earlier statutes were in the form of charters, and no difference was at first made between the construction of a statute and that of any other instrument (*d*). Coke's rule has been adopted by the Courts, and for modern use is best expressed by Lord Esher in *Sharpe v. Wakefield* (1888), 22 Q. B. D. 241: "The words of a statute must be construed as they would have been the day after the statute was passed, unless some subsequent Act has declared that some other construction is to be adopted or has altered the previous statute."

"It has often been held," said Lord Cranworth in the *Montrose Peerage Claim* (1853), 1 Macq. H. L. (Sc.) 401, at p. 406, "and not unwisely or improperly, that the construction of very ancient statutes may be elucidated by what in the language of the Courts is called *contemporanea expositio* (*e*); that is, seeing how they were understood at the time [they were passed]." "In construing ancient statutes," said Lawrence, J., in *Wilson v. Knubley* (1806), 7 East, 128, 136, "attention is always to be paid to the language of the times. The statute of 4 Edw. 3 (c. 7) speaks of a trespass as of a wrong generally, and when it enacts that executors shall have an action against the trespassers, it means thereby against wrongdoers generally." In *Smith v. Lindo* (1858), 27 L. J. C. P. 200, Byles, J., said as to 6 Anne, c. 16 (5 Anne, c. 14, Ruffhead), "That statute was passed 150 years ago. Therefore, we must resort to the contemporaneous exposition of the words." *Contemporanea expositio* ought rarely, if ever, to be applied to modern Acts. In *Trustees of Clyde Navigation v. Laird* (1883, 8 App. Cas. 658, 673), Lord Watson said: "Such usage as has in this case been termed *contem-*

(*b*) See *Bell v. Master in Equity* (1877), 2 App. Cas. 560, 565.

(*c*) See *Pigeon v. Recorder's Court* (1890), 17 Canada, 495, 503.

(*d*) Parl. Pap. 1875—C—208, p. 84. *Vide supra*, pp. 4—9.

(*e*) See also *McWilliam v. Adams* (1851), 1 Macq. H. L. (Sc.) 120; *Graham v. Irving* (1899), 2 Fraser (Sc.), 29, 35, 36.



*poranea expositio* is of no value in construing a British statute of the year 1858 (*f*). When there are ambiguous expressions in an Act passed one or two centuries ago, it may be legitimate to refer to the construction put upon these expressions throughout a long course of years, by the unanimous consent of all persons interested, as evidencing what must presumably have been the intention of the Legislature at that remote period. But I feel bound to construe a recent statute according to its own terms, when these are brought into controversy, and not according to the views which interested parties may have hitherto taken" (*g*), and in *Assheton Smith v. Owen*, (1906) 1 Ch. 179, 213, Cozens-Hardy, L.J., said: "I do not think that the doctrine of *contemporanea expositio* can be applied in construing Acts which are comparatively modern," and the Court declined to apply the rule to the interpretation of local Acts of 1793 and 1800. In *Ohlson's case*, (1891) 1 Q. B. 485, 489, in dealing with the interpretation of sect. 39 of the Pawnbrokers Act, 1872, 35 & 36 Vict. c. 93. Stephen, J., said: "What weighs with me very greatly in coming to the present conclusion is the practice of the Inland Revenue Commissioners for the past sixteen years. So long ago as 1874 this very point was decided by Sir Thomas Henry, for whose decisions we all have very great respect; and the least that can be said with regard to the case before him is that he pointedly called the attention of the commissioners to the case—the learned magistrate having offered to state a case—an offer refused by the commissioners, who by their refusal must be taken to have acquiesced in the decision. That is a very strong contemporaneous exposition of the meaning of the Act." This decision is rendered of doubtful authority by the observations of Lord Watson (quoted *supra*). It is necessary to guard against confusing *contemporanea expositio* as applied to a statute, with the treatment of long usage as proof of a legal right under an ambiguous or lost grant (*h*).

A slight confusion also arises in the application of the rule as to *contemporanea expositio*. It is the business of the judges to find out the contemporary meaning of the terms used in the statute. For this purpose they may have recourse to contemporary exposition, but that exposition is not of necessity conclusive upon them. If ancient error is clearly proved, it acquires

(*f*) Cf. *N. E. R. v. Lord Hastings*, (1900) A. C. 260, 269, Lord Davey.

(*g*) [The case of *Aerated Bread Co. v. Gregg* (1873), L. R. 8 Q. B. 355, is apparently but not really inconsistent with this ruling. That case turned on the meaning of the term "fancy bread" in 6 & 7 Will. 4, c. 37, s. 4, and Blackburn, J., said: "My opinion is that by the proviso the Legislature meant to except such bread as, at the time the Legislature passed this Act, was sold under the denomination of 'French or fancy bread.'" But this opinion was not intended to accept as *contemporanea expositio* a mistaken idea as to what the words meant in 1836.

(*h*) See *Van Diemen's Land Co. v. Table Cape Marine Board*, (1906) A. C. 92, 98; *Assheton Smith v. Owen*, (1906) 1 Ch. 179, 207, V. Williams, L.J.

Different rule  
as to statutes  
and contracts.

no prescription to pass as right in the construction of statutes. With reference to contracts, it appears to be established that *communis error facit jus*. Lord Herschell so held in *Tancred v. Steel Co. of Scotland* (1889), 15 App. Cas. 125, 141, saying, "I think that that doctrine having been laid down so long ago, whether it rests upon any sound basis or not, it would be most improper to depart from it now, because one would be really altering the law between the parties." This rule of interpretation is not of recent origin. In *Amhurst v. Skynner* (1810), 12 East, 263, which turned on the meaning of the Annuity Act, 17 Geo. 3, c. 26, s. 8, Lord Ellenborough, L.C.J., said at p. 269: "The case of *Shrapnel v. Vernon* (1787, 2 Bro. Ch. Cas. 268), establishes that there is no difference between legal and equitable estates in the construction of the clause of the Act. If that case were well decided it makes an end of this question. Now, upon the only occasion pointed out where it has been drawn under consideration, which was before this Court, in *Halsey v. Hales* (1797, 7 T. R. 194), it seems to be affirmed by the judgment of Lord Kenyon. That, then, is an authority sufficient to govern this case; and after so many years have elapsed since, and when many other annuitants may have acted on the faith of it, we ought to see very clearly that it was a wrong construction of the Act before we overturn it." And Le Blanc, J., said (p. 271): "When, therefore, a construction has been put upon a *modern* Act of Parliament within eleven years after the passing of it, and persons have acted upon the faith of it, and when that decision has been recognised ten years afterwards, we must now consider ourselves bound by it" (i). It has indeed been contended that an erroneous but well-established construction of a statute, reached when or soon after the Act came into force, is conclusive even upon the highest Courts. But this is not so. In *Hamilton v. Baker* (1889), 14 App. Cas. 209, 221, Lord Macnaghten said: "The respondent contends that the decision was right, but, whether it was right or not, he contends that it was too late even for this House to interfere. I am sensible of the inconvenience of disturbing a course of practice which has continued unchallenged for such a length of time [since 1865], and which has been sanctioned by such high authority. But if it is really founded upon an erroneous construction of an Act of Parliament, there is no principle which precludes your lordships from correcting the error. To hold that the matter is not open to review would be to give the effect of legislation to a decision contrary to the intention of the Legislature, merely because it has happened, for some reason or another, to remain unchal-

(i) Cf. the observations of Vaughan Williams, L.J., in *Dorking Union v. St. Saviour's Union*, (1898) 1 Q. B. 595, 602, in which the Court followed *R. v. Tipton* (1842), 3 Q. B. 215, a decision on the meaning of the Poor Relief Act, 1662 (14 Chas. 2, c. 12), on the ground, *inter alia*, that it had so long been treated as law by judges and Parliament that it ought not to be overruled.

lenged for a certain length of time." This constitutes a judicial approval of the opinion of Sir Howard Elphinstone, that "if the words of a statute are clear, an interpretation which contradicts them cannot be supported on the ground of usage" (*k*). And this view was adopted by the House of Lords in *N. E. R. v. Lord Hastings*, (1900) App. Cas. 260, where it was decided that an instrument must be construed according to its plain and unambiguous meaning, and not according to a construction said to have been put upon it by the parties for forty years. It has also been adopted in Canada as to a series of decisions by the Courts of New Brunswick and Nova Scotia on the Statute of Limitations, 21 Jac. 1, c. 16, which is in force in those parts of the Dominion whose law is derived from England (*l*).

But if a decision is old enough it stands a good chance of acceptance even by the highest Courts. Speaking of *Bill v. Bament* (1841), 9 M. & W. 36, a decision upon sect. 4 of the Statute of Frauds, Lord Esher said (*m*): "That case has never been overruled, but has been mentioned in subsequent cases as having been accepted, and it would be wrong that we should now differ from it." And Bowen, L.J., added (*n*): "There is thus distinct authority, forty-seven years old, and, so far as I know, not questioned, but acted on and treated as binding; and though it may appear a technical point, I should hesitate to do anything to disturb a rule laid down about the Statute of Frauds, and acted upon for so long." Old decisions.  
29 Chas. 2,  
c. 3.

Courts of justice have always in the past paid great regard to the uniform opinion and practice of eminent conveyancers, which, as said by James, L.J., in *Re Ford and Hill* (1879), 10 Ch. D. 365, 370, "is to be looked upon as part of the common law" (*o*); and in *Bassett v. Bassett* (1744), 3 Atk. 206, 208, Lord Hardwicke gave as one of his reasons for a particular construction of 10 Will. 3, c. 22 (10 & 11 Will. 3, c. 16, Ruffhead), that before the passing of the Act the constant method of all skilful conveyancers was to insert a limitation to preserve contingent remainders to posthumous children, and that ever since the Act they had omitted the clause, which the Chancellor regarded as a strong circumstance to show the uniform opinion of eminent conveyancers that the statute gave to the posthumous heir, not Practice of  
conveyancers.

(*k*) On Interpretation of Deeds, p. 68, citing *Sheppard v. Gosnold* (1672), Vaughan, 159, 169; *Dunbar (Magistrates of) v. Roxburghe (Duchess of)* (1835), 3 Cl. & F. 335; 6 Eng. Rep. 1462; *Att.-Gen. v. Rochester* (1854), 5 De G. M. & G. 797.

(*l*) *Maddison v. Emmerson* (1904), 34 Canada S. C. 553, 567, Nesbitt, J., affd. by the Judicial Committee (1906), not yet reported.

(*m*) *Lucas v. Dixon* (1889), 22 Q. B. D. 357, 359.

(*n*) *L. c.* at p. 362.

(*o*) But the practice to be authoritative must be settled and uniform, and apparently also of old standing: see *Re Ford and Hill*, *ubi sup.*; Elphinstone on Deeds, 639.

only the estate of his ancestor, but the intermediate profits between the death of the ancestor and the birth of the heir.

U.S. doctrine. In the United States the rule is thus stated: "In all cases of ambiguity in an enactment, the contemporaneous construction, not only of the Courts, but of the departments, and even of the officials whose duty it is to carry the law into effect, is controlling" (*p*). This accords with the view expressed by Lord Macnaghten in *Income Tax Commissioners v. Pemsel*, (1891) App. Cas. 531, 590. But a construction of a doubtful or ambiguous statute by the executive department charged with its execution, in order to be binding on the Courts, must be long continued and unbroken (*q*). And where a statute is free from all ambiguity, its letter is not to be disregarded in favour of a presumption as to the policy of the Government, even on proof of the settled practice of the department of State charged with its administration (*r*).

Primary meaning not always parliamentary sense.

3. [We find it sometimes assumed that the real meaning of a statute may be arrived at by construing it according to its "grammatical" construction. Thus in *Att.-Gen. v. Lockwood* (1842), 9 M. & W. 378, 398, Alderson, B., said: "The rule of law upon the construction of all statutes is to construe them according to the plain, literal, and grammatical meaning of the words." But besides the fact that "the language of statutes is not always that which a rigid grammarian would use" (*s*), it must be borne in mind that a statute consists of two parts, the letter and the sense. "It is not the words of the law," said Plowden, p. 465, "but the internal sense of it that makes the law, and our law (like all other) consists of two parts—viz., of body and soul; the letter of the law is the body of the law, and the sense and reason of the law is the soul of the law—*quia ratio legis est anima legis*." Therefore, as Pollock, C.B., points out in *Waugh v. Middleton* (1853), 8 Ex. 352, 356, it is by no means clear that, "if it were laid down as a general rule that the grammatical construction of a clause shall prevail over its legal construction, a more certain rule would be arrived at than if it were laid down that its legal meaning shall prevail over its grammatical construction." "In my opinion," continued Pollock, C.B., "grammatical and philological disputes (in fact, all that belongs to the history of language) are as obscure and lead to as many doubts and contentions as any question of law; and I do not, therefore, feel sure that the rule, much as it has been commended, is on all occasions a sure and certain guide. It must, however, be conceded that where the grammatical construction

(*p*) *Schell's Exors. v. Fauché* (1890), 138 U. S. 562, 572, Brown, J.

(*q*) *Merritt v. Cameron* (1890), 137 U. S. 542, 552, Lamar, J.; cf. *U. S. v. Alabama G. S. R. Co.* (1891), 142 U. S. 615.

(*r*) *St. Paul, Minneapolis, & Co. v. Phelps* (1890), 138 U. S. 523, 533, Lamar, J.

(*s*) *Lyons v. Tucker* (1880), 6 Q. B. D. 660, 664, Grove, J.

is clear and manifest and without doubt, that construction ought to prevail, unless there be some strong and obvious reason to the contrary. But the rule adverted to is subject to this condition, that however plain the apparent grammatical construction of a sentence may be, if it be properly clear from the contents of the same document that the apparent grammatical construction cannot be the true one, then that which, upon the whole, is the true meaning shall prevail, in spite of the grammatical construction of a particular part of it." This rule was perhaps better stated by an Irish judge, Burton, J., in *Warburton v. Loveland* (1828), 1 Hud. & Bro. 632, 648 (t), in terms quoted and approved by Lord Fitzgerald in *Bradlaugh v. Clarke* (1883), 8 App. Cas. 354, 384—viz., "I apprehend it is a rule in the construction of statutes that in the first instance the grammatical sense of the words is to be adhered to. If that is contrary to, or inconsistent with, any expressed intention or declared purpose of the statutes, or if it would involve any absurdity, repugnance, or inconsistency, the grammatical sense must then be modified, extended, or abridged, so far as to avoid such an inconvenience, but no further." And substantially the same opinion is thus expressed by Lord Selborne: "The mere literal construction of a statute ought not to prevail if it is opposed to the intentions of the Legislature as apparent by the statute, and if the words are sufficiently flexible to admit of some other construction by which that intention can be better effectuated" (u).

The canon as to departure from the grammatical meaning is thus stated by Lord Blackburn in *Caledonian Rail. Co. v. North British Rail. Co.* (1881), 6 App. Cas. 114, 131: "There is not much doubt about the general principle of construction. Lord Wensleydale used to enunciate (I have heard him many and many a time) that which he called the golden rule for construing all written engagements. I find that he stated it very clearly and accurately in *Grey v. Pearson* (x) in the following terms: 'I have been long and deeply impressed with the wisdom of the rule, now, I believe, universally adopted—at least in the Courts of law in Westminster Hall—that in construing wills, and indeed statutes and all written instruments, the grammatical and ordinary sense of the words is to be adhered to, unless that would lead to some absurdity, or some repugnance or inconsistency with the rest of the instrument, in which case the grammatical and ordinary sense of the words may be modified so as to avoid the absurdity and inconsistency, but no further.' I agree in that completely, but in the cases in which there is a

(t) See also *Abbot v. Middleton* (1858), 7 H. L. C. 115, Lord Wensleydale; *Thellusson v. Lord Rendlesham* (1858), 7 H. L. C. 519.

(u) *Caledonian Rail. Co. v. North British Rail. Co.* (1881), 6 App. Cas. 114, 122. Cf. *N. E. R. v. Lord Hastings*, (1900) A. C. 260, 267, Lord Davey. For an application of this canon to 24 & 25 Vict. c. 109, s. 21, see *Ruther v. Harris* (1875), 1 Ex. D. 97, Grove, J.

(x) (1857) 6 H. L. C. 61, 106. [See also *R. v. Banbury* (1834), 1 A. & E. 136, 142.]

real difficulty this [rule of construction] does not help us much, because the cases in which there is a real difficulty are those in which there is a controversy as to what the grammatical and ordinary sense of the words used with reference to the subject-matter is. To one mind it may appear that the most that can be said is that the sense may be what is contended by the other side, and that the inconsistency and repugnancy is very great, that you should make a great stretch to avoid such absurdity, and that what is required to avoid it is a very little stretch or none at all. To another mind it may appear that the words are perfectly clear—that they can bear no other meaning at all, and that to substitute any other meaning would be not to interpret the words used, but to make an instrument for the parties—and that the supposed inconsistency or repugnancy is perhaps a hardship—a thing which perhaps it would have been better to have avoided, but which we have no power to deal with.” In *Richards v. McBride* (1881), 8 Q. B. D. 119, 123, Grove, J., said: “I even doubt whether, if there were words in the Act tending strongly the other way, I could pass from the plain grammatical construction of the phrase in question. The onus of showing that the words do not mean what they say lies heavily on the party who alleges it. He must, as Parke, B., said in *Becke v. Smith* (y), advance something which clearly shows that the grammatical construction would be repugnant to the intention of the Act or lead to some manifest absurdity.” And in *The Duke of Buccleuch* (1889), 15 P. D. 86, Lord Justice Lindley put the rule thus: “You are not so to construe the Act of Parliament as to reduce it to rank absurdity. You are not to attribute to general language used by the Legislature in this case, any more than in any other case, a meaning which would not carry out its object, but produce consequences which, to the ordinary intelligence, are absurd. You must give it such a meaning as will carry out its objects.”

The same canon of construction also applies to rules made by authority of the Legislature. In a recent case, with reference to the rules for preventing collision at sea, it was laid down in the Privy Council that “we must construe the rule (one made under statutory authority) as nearly as possible literally; we must construe it as strictly as it will bear, so as not to lead to the absurdities which have been pointed out; short of that it must be construed to its full context” (z).

Rule as to  
following  
plain meaning  
not allowed to  
produce

4. It is clear that [“if,” as Jervis, C.J., said in *Abley v. Dale* (1851), 20 L. J. C. P. 233, 235, “the precise words used are plain and unambiguous, we are bound to construe them in their ordinary sense, even though it does lead to an absurdity or

(y) (1836), 2 M. & W. 191, 195.

(z) *The Fanny M. Carrill* (1875), 13 App. Cas. 455, n. (P. C.), approved by the House of Lords in *The Glamorganshire* (1888), 13 App. Cas. 454.

manifest injustice. Words may be modified or varied where their import is doubtful or obscure, but we assume the functions of legislators when we depart from the ordinary meaning of the precise words used, merely because we see, or fancy we see, an absurdity or manifest injustice from an adherence to their literal meaning.”] And in *Simms v. Registrar of Probates*, (1900) App. Cas. 323, 335, Lord Hobhouse, speaking for the Judicial Committee, said: “Where there are two meanings, each adequately satisfying the meaning (of a statute), and great harshness is produced by one of them, that has a legitimate influence in inclining the mind to the other . . . it is more probable that the Legislature should have used the word (‘evade’) in that interpretation which least offends our sense of justice” (a). In *R. v. Tonbridge Overseers* (1884), 13 Q. B. D. 342, Brett, L.J., said: “If the inconvenience is not only great, but what I may call an absurd inconvenience, by reading an enactment in its ordinary sense, whereas if you read it in a manner in which it is capable, though not its ordinary sense, there would not be any inconvenience at all: there would be reason why you should not read it according to its ordinary grammatical meaning.” Therefore, if a too literal adherence to the words of the enactment appears to produce an absurdity or an injustice, it will be the duty of a court of construction to consider the state of the law at the time the Act was passed (b), with a view to ascertaining whether the language of the enactment is capable of any other fair interpretation (c), or whether it may not be desirable to put upon the language used a secondary (d) or restricted (e) meaning, or perhaps to adopt a construction not quite strictly grammatical (f). [“The general rule,” said Willes, J., in *Christopherson v. Loting* (1864), 33 L. J. C. P. 123, “is stated by Lord Wensleydale in these terms—viz., ‘to adhere to the ordinary meaning of the words used, and to the grammatical construction, unless that is at variance with the intention of the Legislature, to be collected from the statute itself, or leads to any manifest absurdity or repugnance, in which case the language may be varied or modified so as to avoid such inconvenience, but no further.’ I certainly,” continued Willes, J., “subscribe to every word of the rule, except the word ‘absurdity,’ unless that be considered as used there in the same sense as

manifest  
absurdity or  
futility, pal-  
pable injus-  
tice, or absurd  
inconvenience  
or anomaly.

(a) But in *Capell v. Great Western Rail. Co.* (1883), 11 Q. B. D. 348, Brett, M.R., said: “I protest against the suggestion that where the words of an Act of Parliament are plain, the Court is to make any alteration in them because injustice may be otherwise done.”

(b) [*Gover's case* (1875), 1 Ch. D. 182, 198, Brett, J.]

(c) [*Wear River Commissioners v. Adamson* (1876), 1 Q. B. D. 546, 549, Jessel, M.R.]

(d) [*Ex parte St. Sepulchre's* (1864), 33 L. J. Ch. 373, Lord Westbury.]

(e) In *Ex parte Walton* (1881), 17 Ch. D. 746, 757, Lush, L.J., said: “In order to prevent absurdity we must read the word ‘surrendered’ in a qualified sense.”

(f) [*Williams v. Evans* (1876), 1 Ex. D. 284, Field, J.]

‘repugnance’; that is to say, something which would be so absurd with reference to the other words of the statute as to amount to a repugnance”<sup>(g)</sup>.] This rule was thus expressed by Jessel, M.R. <sup>(h)</sup>: “Any one who contends that a section of an Act of Parliament is not to be read literally must be able to show one of two things—either that there is some other section which cuts down its meaning, or else that the section itself (if read literally) is repugnant to the general purview of the Act.” [6 Geo. 3, c. 53, s. 1, gave a form of oath which it was required should be taken by certain persons. The form of oath contained the name of King George III., and made no provision for the necessary alteration in the name of the sovereign at his death. It was argued in *Miller v. Salomons* (1852), 7 Ex. 475, that as the form of the oath mentioned the name of King George only, the obligation to administer it ceased with the reign of that sovereign, because it was applicable to no other than to him. “I think,” said Parke, B., in his judgment, at p. 553, “this argument cannot prevail. It is clear that the Legislature meant the oath to be taken always thereafter, and as it could not be taken in those words during the reign of a sovereign not of the name of George, it follows that the name George is merely used by way of designating the existing sovereign, and the oath must be altered from time to time in the name of the sovereign. This is an instance in which the language of the Legislature must be modified, in order to avoid absurdity and inconsistency with its manifest intentions” <sup>(i)</sup>.]

The argument *ab inconvenienti* is only admissible in construction where the meaning of the statute is obscure. Where the language is explicit, its consequences are for Parliament, and not for the Courts to consider. *Quidquid delirant reges, plectuntur Achiivi*. In such a case the suffering citizen must appeal to the lawgiver, and not to the lawyer, for relief <sup>(k)</sup>. The readiness to infer an inconvenience depends, to some extent, on the personal equation of the judge. But the safe rule is that laid down by Cotton, L.J., in *Reid v. Reid* (1886), 31 Ch. D. 402, 407: “In considering the true construction of an Act, I am not so much affected as some judges are by the consequences which may arise from different constructions. Of course, if the words are *ambiguous*, and one construction leads to *enormous* inconvenience, and another construction does not, the one which leads to least inconvenience is to be preferred.” And the Courts will not lightly impugn the wisdom of the Legislature, and if any alter-

<sup>(g)</sup> See hereon *Tasmania v. Commonwealth* (1904), 1 Australia C. L. R. 329, 346, Barton, J.

<sup>(h)</sup> *North v. Tamplin* (1881), 8 Q. B. D. 247, 253.

<sup>(i)</sup> [*Cf. R. v. Everdon* (1807), 9 East, 101, Ellenborough, C.J., where the question raised was whether “bringing” a pauper before a justice with a view to removal meant bringing him physically there.]

<sup>(k)</sup> *Cf. Garland v. Carleton*, 4 Cl. & F. 693, 705, Coleridge, J., quoted *ante*, p. 66.



native construction, although not the most obvious, will give a reasonable meaning to the Act and obviate the absurdities or inconveniences of absolutely literal construction, the Courts deem themselves free to adopt it. This view is thus stated by Lord Esher in *R. v. Commissioners under the Boiler Explosions Act*, 1882, (1891) 1 Q. B. 703, 716: "It is said that it is very inconvenient that the Board of Trade should have jurisdiction (under the Boiler Explosions Act, 1882), because it is not denied that the Home Secretary has jurisdiction under the Mines Regulation Act [1887]. The inconvenience is manifest in my opinion, and, if I could have done so properly, I should have been very willing to hold that the sole jurisdiction was in the Home Secretary; but if any mistake has been made, it is not the province of the Court to legislate so as to cure defects." And in *Re Law*, (1891) 1 Q. B. 47, the same judge said: "The only difficulty suggested in following the words of the section [125 (10) of the Bankruptcy Act, 1883] is, that if they are taken literally in a case where there are two [bankruptcy] notices, one in respect of each judgment debt, the debtor might pay on one, and so no bankruptcy petition could be presented. I do not think that is a sufficient reason for reading the words of the section otherwise than as they are written." But in *R. v. Cumberland Justices* (1881), 8 Q. B. D. 369, the Court held it necessary to limit the meaning of "premises" in sect. 45 of the Licensing Act, 1872, to premises for which an "on" licence is sought, in order to put a reasonable construction on the Act, and to obviate the necessity of holding that an Act passed to regulate "on" licences repealed 3 & 4 Vict. c. 61, which relates wholly to "off" licences.

45 & 46 Vict.  
c. 22.

50 & 51 Vict.  
c. 53.

46 & 47 Vict.  
c. 52.

35 & 36 Vict.  
c. 91.

5. [It is not, however, competent to a judge to modify the language of an Act of Parliament in order to bring it into accordance with *his own* views as to what is right or reasonable.] *Boni judicis est jus dicere, non jus dare.* [In *Abel v. Lee* (1871), L. R. 6 C. P. 365, the question was, what was the proper construction to be put upon the Reform Act, 1867, s. 3 (4), which enacts that any man is entitled to be registered as a voter who, on or before July 20, has paid "all poor rates that have become payable by him up to the preceding fifth day of January." It appeared that the person in question had paid all the rates of the current year, but had been excused, on account of poverty, from paying a rate that had been payable in the preceding year. The question therefore was, Did the expression "all poor rates that have become payable" include the rate he had been excused or not? It was argued, that if these words were construed in their ordinary and strictly grammatical meaning, so as to include *all* past rates, this absurdity might follow, that the claimant would lose his franchise for ever unless he paid up this old rate which he had been excused, and that therefore the language of the Act ought to be modified, and the words construed in a

Judge not to  
mould  
statutes to  
his own con-  
ceptions of  
justice or  
expediency.  
30 & 31 Vict.  
c. 102.

restricted sense. This argument, however, did not prevail. "No doubt," said Willes, J. (p. 371), "the general rule is that the language of an Act is to be read according to its ordinary grammatical construction, unless so reading it would entail some absurdity, repugnancy, or injustice. . . . But I utterly repudiate the notion that it is competent to a judge to modify the language of an Act in order to bring it in accordance with his views of what is right or reasonable."]

38 & 39 Vict.  
c. 55.

An extreme instance of the application of this rule is to be found in *Young v. Mayor, &c. of Liverpool* (1882), 8 Q. B. D. 579; 8 App. Cas. 517. Sect. 174 of the Public Health Act, 1875, requires contracts entered into by a sanitary authority for a sum over 50*l.* to be under seal. The plaintiff executed works approved by the defendants under the supervision of their engineer, and under a contract in writing with the engineer which was not sealed by the corporation. The Court of Appeal decided that the defendants were not bound by the contract, although they had had the benefit of it, on the ground that to hold otherwise would be to repeal the enactment. "It may be," said Lindley, L.J. (at p. 585), "that this is a hard and narrow view of the law; but my answer is, that Parliament has thought it expedient to require this view to be taken, and it is not for this or any other Court to decline to give effect to a clearly expressed statute because it may lead to apparent hardship." This case may also be read as deciding that there can be no waiver of compliance with statutory provisions enacted in the public interest, nor estoppel against setting up non-compliance with them, when the provisions relate to the form of contracts between individuals and public bodies created by or under a statute (*l*).

In *R. v. Mansel Jones* (1889), 23 Q. B. D. 29, 32, Lord Coleridge said that it is the business of the Courts to see what Parliament has said, instead of reading into an Act what ought to have been said. This involves the assumption that the Act in question is intelligible (*m*). But the consequences of any other mode of construction would be to defeat the purposes of the Legislature. And in *Latham v. Lafone* (1867), L. R. 2 Ex. 115, 121, Martin, B., said: "I think the proper rule for construing this statute is to adhere to its words strictly; and it is my strong belief that, by reasoning on long-drawn inferences and remote consequences, the Courts have pronounced many judgments affecting debts and actions in a manner that the persons who originated and prepared the Act never dreamed of." And in *Coxhead v. Mullis* (1878), 3 C. P. D. 439, 442, Coleridge, C.J., said: "The tendency of my own mind . . . always is to suppose that Parliament meant what Parliament has clearly

(*l*) See also *Melliss v. Shirley Local Board* (1885), 16 Q. B. D. 446, and *ante*, p. 74.

(*m*) See 6 Law Quarterly Review, 118.

said, and not to limit plain words in an Act of Parliament by considerations of policy, if it be policy, as to which minds may differ and as to which decisions may vary" (see *post*, Part I. ch. v.). But the same judge, upon the same Act, in a subsequent case (*n*), allowed himself to be affected by considerations of natural justice, which is, perhaps, even more difficult to ascertain judicially than the policy of a statute.

6. [With regard to what is meant by the expression, "the plain meaning of the words of a statute," it is necessary, on all occasions, to give the Legislature credit for employing those words which will express its meaning more clearly than any other words; so that if in any particular instance it can be shown that there are two expressions which might have been used to convey a certain intention, but one of those expressions will convey that intention more clearly than the other, it is proper to conclude that, if the Legislature uses that one of the two expressions which would convey the intention less clearly, it does not intend to convey that intention at all, and in that event it becomes necessary to look about to discover what intention it did intend to convey. "In endeavouring," said Pollock, C.B., in *Att.-Gen. v. Sillem* (1863), 2 H. & C. 431, 515, "to discover the true construction of any particular clause of a statute, the first thing to be attended to, no doubt, is the actual language of the clause itself, as introduced by the preamble; 2nd, the words or expressions which obviously are by design omitted; 3rd, the connection of the clause with other clauses in the same statute, and the conclusions which, on comparison with other clauses, may reasonably and obviously be drawn. . . . If this comparison of one clause with the rest of the statute makes a certain proposition clear and undoubted, the Act must be construed accordingly, and ought to be so construed as to make it a consistent and harmonious whole. If, after all, it turns out that that cannot be done, the construction that produces the greatest harmony and the least inconsistency is that which ought to prevail." In that case it was contended on the part of the prosecution that 59 Geo. 3, c. 69, s. 7, was meant to put ships constructed for war upon a footing different from any other munitions of war; to leave cannon, arms, and gunpowder to be freely supplied to belligerent Powers, but to prevent ships of a warlike character from being furnished to them. "If this had been the object of our Legislature," said Pollock, C.B. (p. 526), "it might have been accomplished by the simplest possible piece of legislation; it might have been expressed in language so clear that no human being could entertain a doubt about it, instead of the awkward, difficult, and doubtful clause which it is admitted on the part of the prosecution we have to deal with." In *Waugh v. Middleton* (1853), 8 Ex. 352, the Court said: "We are not compelled to read 'now' exactly as if the Legislature had used the word 'hereto-

Legislature is always assumed to have employed the clearer of two ways of expressing same idea.

(*n*) *Valentini v. Canali* (1889), 24 Q. B. D. 166.

fore.' A very strong reason for holding that the Legislature has not used the word 'now' in that sense is that, if the Legislature intended so to use it, expressions would have been adopted which would have left no possible doubt as to what was intended. But there are no expressions which clearly and distinctly indicate the intention of giving effect to deeds which had theretofore been entered into, and completed so as to bind other persons not parties to them. And in the absence of those expressions, which might have been so easily used, grave doubts may be entertained as to whether this could have been the meaning." Similarly, in *Dover Gaslight Co. v. Mayor, &c. of Dover* (1855), 1 Jur. N. S. 813, Turner, L.J., held that a certain construction, which it had been suggested might be put upon an Act, was not the right construction; "for," said he, "if such had been the intention of the Legislature, I think more appropriate language might have been used."]

## CHAPTER II.

RULES FOR CONSTRUCTION WHEN THE MEANING  
IS NOT PLAIN.

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1. [If the language of an Act of Parliament is clear and explicit, it must, as already stated (*a*), receive full effect, whatever may be the consequences.] Of many an Act, however, it can fairly be said, as was said by Lord Herschell (*b*) of the Building Societies Act, 1884, that no construction of it "is free from difficulty, and no construction carries out a clear and well-defined policy of the Legislature" (*c*). If (as is often the case) the meaning of an enactment, whether from the phraseology used (*d*) or otherwise, is obscure, or if the enactment is, as

Mode of  
ascertaining  
meaning if  
obscure.

47 & 48 Vict.  
c. 41.

(*a*) *Ante*, p. 66; and see Wilberforce, *Statute Law*, pp. 2, 3.

(*b*) *Western Building Society v. Martin* (1885), 17 Q. B. D. 609.

(*c*) [For other examples of obscure statutes see *Winter v. Att.-Gen. of Victoria* (1875), L. R. 6 P. C. 378, where the Judicial Committee described the Victoria Land Act, 1869 (No. 360), s. 98, as "not merely ambiguous, but, according to the literal meaning of its language, insensible." In *Cocker v. Cardwell* (1869), L. R. 5 Q. B. 15, Cockburn, C.J., stigmatised the drafting of the Nuisance Removal Acts, therein cited, as "one of the most remarkable specimens of legislative incuria of the many which are daily brought before us." Sir James Stephen, in his *Digest of the Criminal Law* (1st ed.), points out several obscurely-worded statutes. At p. xix. note 2, he says: "Let any one read and try to construe 24 & 25 Vict. c. 98, ss. 13—16, and ss. 27, 28 are still worse." As to 39 & 40 Vict. c. 36, ss. 188, 189, he says (p. 44, note 2): "There must be some mistake in the drafting, as there is no nominative case to the verb . . ." These sections were amended by 42 & 43 Vict. c. 21, s. 10. And (at p. 173, note 4) he points out that, in 38 & 39 Vict. c. 94, s. 3, "the words [with or without her consent] ought either to be omitted altogether, or else changed into 'even with her consent.'" It was the opinion of Daines Barrington that the statutes of the last century were much better drawn than in former times. He says in his *Observations on the Statutes* (3rd ed.), 174: "It may with justice be asserted that modern statutes are infinitely more perspicuous and intelligible than the ancient ones, of which there can be no stronger proof than that there is not perhaps a single statute, since the Statute of Frauds and the Statute of Distributions in the reign of Charles II., which hath required much explanation."]

(*d*) [As to the phraseology employed being the cause of many questions which arise as to the meaning of statutes, it was said by Lord Coke in the preface to

Brett, L.J., said in *The R. L. Alston* (1883), 8 P. D. 5, 9, “unfortunately expressed in such language that it leaves it quite as much open, with regard to its form of expression, to the one interpretation as to the other,” the question arises, “What is to be done? We must try and get at the meaning of what was intended by considering the consequences of either construction.” And if it appears that one of these constructions will do injustice, and the other will avoid that injustice, “it is the bounden duty of the Court,” as Lord Cairns said in *Hill v. East and West India Dock Co.* (1884), 9 App. Cas. 448, 456, “to adopt the second, and not to adopt the first, of those constructions.” [However “difficult, not to say impossible,” it may be to put a perfectly logical construction upon a statute, a Court of justice “is bound” (as Sir James Wilde pointed out in *Phillips v. Phillips* (1866), L. R. 1 P. & M. 169, 173) “to construe it, and, as far as it can, to make it available for carrying out the objects of the Legislature, and for doing justice between parties” (e).] This rule is not peculiar to English law, and is equally applicable to Scotch and colonial statutes (f).

Sense to be made if possible.

The first business of the Courts is to make sense of the ambiguous language, and not to treat it as unmeaning, it being a cardinal rule of construction that a statute is not to be treated as void, however oracular. This was thus laid down by Bowen, L.J., in *Curtis v. Stovin* (1889), 22 Q. B. D. 512, 517: “The rules for the construction of statutes are very like those which apply to the construction of other documents, especially as regards one crucial rule—viz., that, if possible, the words of an Act of Parliament must be construed so as to give a sensible meaning to them. The words ought to be construed *ut res magis valeat quam pereat*.” And Fry, L.J., added (at p. 519): “The only alternative construction offered to us would lead to this result—that the plain intention of the Legislature has entirely failed by reason of a slight inexactitude in the language of the section. If we were to adopt this construction, we should be construing the Act in order to defeat its object rather than with a view to carry its object into effect.” In the particular case the Court had to deal with sect. 65 of the County Courts Act, 1888, empowering the High Court to send certain actions which could not be commenced in a county court for trial “in any county court in which the action might have been com-

51 & 52 Vict.  
c. 43.

Part II. of his Reports, as follows:—“*Neque enim (ut quod res est dicam) difficiles propemodum ac spinosæ questiones ex principiis juris oriuntur sed . . . nonnunquam ex ipsis comitorum institutis cautionum atque additionum mole onustis, et vel in pulvere ac festinatione conscriptis, vel a sciolo quopiam in hoc genere correctis et emendatis.*”]

(e) In *Freme v. Clement* (1881), L. R. 18 Ch. D. 499, 508, Jessel, M.R., expressed the same idea in the following words:—“We ought to adopt that interpretation which will make the law uniform, and will remedy the evil which prevailed in all the cases to which the law can be fairly applied.”

(f) It has been so applied in *Railton v. Wood* (1890), 15 App. Cas. 363; and *Heritable Reversionary Co. v. Millar*, (1892) A. C. 598, 623, Lord Field.

menced" (g). If these words had been taken literally, the section would have been ineffectual, for, *ex hypothesi*, the actions in question could not be commenced in the county court. The Court of Appeal therefore read into the section the words "*if it had been a county court action*," in order to give effect to the rule above enunciated.

2. [The most firmly established rules for construing an obscure enactment are those laid down by the Barons of the Exchequer in *Heydon's case* (h), which have been continually cited with approval (i) and acted upon, and are as follows:— "That for the sure and true interpretation of all statutes in general (be they penal (k) or beneficial, restrictive or enlarging of the common law), four things are to be discerned and considered. (1) What was the common law before the making of the Act. (2) What was the mischief and defect for which the common law did not provide. (3) What remedy the Parliament hath resolved and appointed to cure the disease of the commonwealth. (4) The true reason of the remedy. And then the office of all the judges is always to make such construction as shall suppress the mischief and advance the remedy, and to suppress subtle inventions and evasions for the continuance of the mischief and *pro privato commodo*, and to add force and life to the cure and remedy according to the true intent of the makers of the Act *pro bono publico*." These rules are still in full force and effect, with the addition that regard must now be had not only to the common law, but also to prior legislation and to the judicial interpretation thereof. A good illustration of the way in which these rules are applied is to be found in *Salkeld v. Johnson* (1848), 2 Ex. 256, 272, where the question was whether, under the Tithe Act, 1832, a valid and indefeasible claim of exemption from payment of tithes could be sustained for lands which have never paid tithes for sixty years. "This question depends," said the Court, "upon the construction of this Act, which unfortunately has been so penned as to give rise to a remarkable difference of opinion among the judges. . . . We propose to construe the Act, according to the legal rules for the interpretation of statutes, principally by the words of the statute itself, which we are to read in their ordinary sense, and only to modify or alter so far as it may be necessary to avoid some manifest absurdity or incongruity, but no further. It is proper also to consider (1) the state of the law which it proposes

Rules in  
*Heydon's case*.

2 & 3 Will. 4,  
c. 100.

(g) In the same section is used the Hibernicism, "convenient thereto," which embarrassed the judges in *Burkill v. Thomas*, (1892) 1 Q. B. 99.

(h) (1584) 3 Co. Rep. 8. See 1 Bl. Com. ed. Hargrave, p. 87, n. 38.

(i) E.g. in *The Solio case*, (1898) A. C. 571, 573, Halsbury, L.C.; *Miller v. Salomons* (1852), 7 Ex. 475; *Att.-Gen. v. Sillem* (1863), 2 H. & C. 431; *R. v. Castro* (1874), L. R. 9 Q. B. 350; *Davies v. Kennedy* (1869), Ir. R. 3 Eq. 668, 693.

(k) In *Att.-Gen. v. Sillem* (1863), 2 H. & C. 431, 509, Pollock, C.B., held that "penal," in *Heydon's case*, meant creating a disability or forfeiture. As to the rules for construing penal statutes, see *post*, Part III. ch. i.

or purports to alter; (2) the mischief which existed, and which it was intended to remedy; and (3) the nature of the remedy provided, and then to look at the statutes *in pari materiâ* as a means of explaining this statute. These are the proper modes of ascertaining the intention of the Legislature.”]

38 & 39 Vict.  
c. 55.

In *Young v. Mayor, &c. of Leamington* (1883), 8 App. Cas. 517, 526, Lord Blackburn said that the Courts “ought in general, in construing an Act of Parliament, to assume that the Legislature knows the existing state of the law.” The assumption may be taken as correct with reference to the knowledge of the draftsman of Government Bills, and perhaps his knowledge may be imputed to Parliament. From this assumption springs the practice of the Courts to examine the pre-existing law in order to clear up any doubt as to the meaning of an Act. Such an examination was made by Lord Blackburn, in the case last cited, to assist him to the conclusion that sect. 174 of the Public Health Act, 1875, was intended to get rid of the doubts, raised by judicial decisions, whether certain corporations could contract otherwise than under their common seal. This was the regular practice of that very learned judge in all cases in which any doubt arose in his mind, whether they arose upon the construction of an English (*l*) or a colonial (*m*) statute, and it is generally recognised as a proper method of ascertaining the true meaning of an enactment (*n*).

Exposition  
*ex visceribus*  
*actûs*.

3. [But besides the rules laid down in *Heydon's case* (3 Co. Rep. 8) for the exposition of obscurely penned statutes, there is a general rule of construction which is applicable to all statutes alike, and which is usually spoken of as a construction *ex visceribus actûs* (*o*)—within the four corners of the Act. “The office of a good expositor of an Act of Parliament,” said Lord Coke in the *Lincoln College case* (1595), 3 Co. Rep. 59 *b*, “is to make construction on all the parts together, and not of one part only by itself—*Nemo enim aliquam partem recte intelligere potest antequam totum iterum atque iterum perlegerit*.” And again, in 1 Inst. 381 *b*, he says: “It is the most natural and genuine exposition of a statute to construe one part of a statute by another part of

(*l*) *Bradlaugh v. Clarke* (1883), 6 App. Cas. 354, 373, 375.

(*m*) *Carter v. Molson* (1883), 6 App. Cas. 530, 536, 541.

(*n*) *Cf. Yorkshire Insurance Co. v. Clayton* (1881), 8 Q. B. D. 421, Brett, L.J.

(*o*) [Sir Roundell Palmer, in a speech on the Collier Amendment (Feb. 1872), well expounded the meaning of “construction *ex visceribus actûs*.” He then said as follows: “Nothing is better settled than that a statute is to be expounded, not according to the letter, but according to the meaning and spirit of it. What is within the true meaning and spirit of the statute is as much law as what is within the very letter of it, and that which is not within the meaning and spirit, though it seems to be within the letter, is not the law, and is not the statute. That effect should be given to the object, spirit, and meaning of a statute is a rule of legal construction, but the object, spirit, and meaning must be collected from the words used in the statute. It must be such an intention as the Legislature has used fit words to express.” See 209 Hansard (3rd series), 685.]



the same statute, for that best expresseth the meaning of the makers . . . and this exposition is *ex visceribus actus*." But this rule of construction is never allowed to alter the meaning of what is of itself clear and explicit (*p*); it is only when, as the Court said in *Palmer's case* (1784), 1 Leach, C. C. 355 (4th ed.), "any part of an Act of Parliament is penned obscurely and when other passages can elucidate that obscurity, that recourse ought to be had to such context for that purpose"; for, as the judges said in the House of Lords in *Warburton v. Loveland* (1831), 2 D. & Cl. 489, 500, "no rule of construction can require that when the words of one part of a statute convey a clear meaning, it shall be necessary to introduce another part of a statute for the purpose of controlling or diminishing the efficacy of the first part" (*q*). "It is not the duty of a Court of law," said Selwyn, L.J., in *Smith's case* (1869), 4 Ch. App. 611, 614, "to be astute to find out ways in which the object of an Act of the Legislature may be defeated."]

[This rule of construction has frequently been recognised and acted upon by Courts of law from Coke's time down to the present day. In *Brett v. Brett* (1826), 3 Addams, 210, Sir John Nicholl says as follows: "The key to the opening of every law is the reason and spirit of the law; it is the *animus impo- nentis*, the intention of the law-maker expressed in the law itself, taken as a whole. Hence, to arrive at the true meaning of any particular phrase in a statute, the particular phrase is not to be viewed detached from its context in the statute; it is to be viewed in connection with its whole context, meaning by this as well the title and preamble as the purview or enacting part of the statute." In *Bywater v. Brandling* (1828), 7 B. & C. 643, 660, Lord Tenterden said: "In construing Acts of Parliament we are to look not only at the language of the preamble or of any particular clause, but at the language of the whole Act. And if we find in the preamble or in any particular clause an expression not so large and extensive in its import as those used in other parts of the Act, and upon a view of the whole Act we can collect from the more large and extensive expressions used in other parts the real intention of the Legislature, it is our duty to give effect to the larger expressions, notwithstanding the phrases of less extensive import in the preamble or in any particular clause." In *R. v. Mallow* (1859), 12 Ir. C. L. R. 35, the question was whether the Common Lodging House Acts of 1851 and 1853 applied to Ireland. "*Primâ facie*," said Lefroy, C.J., "since the Union every Act applies to Ireland,

14 & 15 Vict.  
c. 28.  
16 & 17 Vict.  
c. 41.

(*p*) [In *Bentley v. Rotherham* (1876), 4 Ch. D. 588, 592, Jessel, M.R., put it in this way: "There is no doubt a rule, applicable to Acts of Parliament as well as to other legal instruments, that you may control the plainest words by reference to the context. But then, as has been said very often, you must have a context even more plain, or at least as plain as the words to be controlled."]

(*q*) Cf. *Tasmania v. Commonwealth* (1904), 1 Australia C. L. R. 329, 357.

but according to Lord Coke the construction of a statute is best made *ex visceribus actus*, and, on looking carefully through the details of these Acts, I think abundant proof will be found of their inapplicability to Ireland" (r). In *Ex parte St. Sepulchre's* (1864), 33 L. J. Ch. 375, Lord Westbury said: "The Vice-Chancellor has taken these words apart from the context. . . . He is of opinion that what he denominates the abstract justice of the case requires this interpretation. I cannot concur in that reasoning. I cannot admit the principle that in a matter of positive law abstract justice requires or justifies any departure from the established rules of interpretation. In *Rein v. Lane* (1867), L. R. 2 Q. B. 144, 151, Blackburn, J., said: "It is, I apprehend, in accordance with the general rule of construction that you are not only to look at the words, but you are to look at the context, the collocation (s), and the object of such words relating to such matter, and interpret the meaning according to what would appear to be the meaning intended to be conveyed by the use of the words under the circumstances" (t).]

In *Colquhoun v. Brooks* (1889), 14 App. Cas. 493, 506, Lord Herschell said: "It is beyond dispute, too, that we are entitled, and indeed bound, when construing the terms of any provision found in a statute, to consider any other parts of the Act which throw light on the intention of the Legislature, and which may serve to show that the particular provision ought not to be construed as it would be alone and apart from the rest of the Act."

"It certainly is not a satisfactory method of arriving at the meaning of a compound phrase to sever it into several parts, and to construe it by the separate meaning of each of such parts when severed. Many examples will occur to the mind where such a process would lead to absurdity." (Halsbury, L.C., in *Mersey Docks, &c. Board v. Henderson* (1888), 13 App. Cas. 595, 599.)

It follows from the rule thus variously stated that all statutory definitions or abbreviations must be read subject to the qualification, variously expressed, in the definition clauses which create them—

- (3) "unless the context otherwise requires";
  - (2) "unless a contrary intention appears";
  - (3) if not consistent with the context or subject-matter;
- or, in other words, unless the judges think the statutory defini-

(r) A definition in 23 & 24 Vict. c. 26, passed to get rid of this decision, has been held to govern the meaning in England of the term "lodging-house," which is not defined in the Acts of 1851 and 1853 (in *Parker v. Talbot*, (1905) 1 Ch. 643, C. A.).

(s) In *R. v. Ramsgate* (1827), 6 B. & C. 712, 717, Holroyd, J., said that the words there in question "must be construed, according to their nature and import, in the order in which they stand in the Act of Parliament."

(t) Hence the rule laid down by Lord Coke (2 Inst. 386), "that a case, out of the mischief intended to be remedied by a statute, shall be construed to be out of the purview, though it be within the words." Quoted and acted upon by Abbot, C.J., in *Doe v. Bartle* (1822), 5 B. & Ald. 492, 501.

tion inapplicable to the particular part of the statute which is under their consideration.

4. [There is also another mode of construction called proceeding upon "the equity of the statute," which mode, as Lord Westbury said in *Hay v. Lord Provost of Perth* (1863), 4 Macq. H. L. (Sc.) 544, was "very common with regard to our earlier statutes, and very consistent with the principle and manner according to which Acts of Parliament were at that time framed." This mode of construction was explained (u) by Coke in 1 Inst. 24 b. "'Equity,'" said he, "is a construction made by the judges, that cases out of the letter of a statute, yet being within the same mischief, or cause of the making of the same, shall be within the same remedy that the statute provideth; and the reason hereof is, for that the law-makers could not possibly set down all cases in express terms" (x).

Construction  
by the equity  
of a statute.

This mode of interpretation has at the present day almost fallen out of use in Courts of law in England (y).] But in *Russell v. Meyrick*, (1903) 2 Ch. 461, C. A., it was necessary to construe estate Acts of 1535 and 1863, affecting the Broke Estates; and Cozens-Hardy, L.J., said: "The Statute of Uses, which was enacted in the same year as the Broke Estates Act (1535), contained provisions to the effect that a wife for whom a jointure should be provided could not also claim dower. It was held in *Vernon's case* ((1572), 4 Co. Rep. 1 a) that a devise of land to a wife is a jointure within the Statute of Uses. 'Although land was not devisable until 32 Hen. 8 (c. 1), yet it is frequent in our books that an Act made of late time shall be taken within the equity of an Act made long time before.' This seems to justify the conclusion that a jointure under the power conferred by the Broke Estates Act upon tenants in tail may be well created by a testamentary instrument." At the present time "much more weight," as Lord Blackburn said in *Braillough v. Clark* (1883), 8 App. Cas. 354, 373, "is given to the natural meaning of the words than was done in the time of Elizabeth." ["I cannot forbear observing," said Lord Tenterden in *Brandling v. Barrington* (1827), 6 B. & C. 467, 475, "that I think there is always danger in giving effect to what is called the equity of

(u) *Qui hæret in literâ hæret in cortice*, 1 Co. Inst. 546. See also 3 Co. Rep. 31: 5 *ib.* 99. [Perhaps the fullest dissertation on the subject is to be found in a note at the end of *Eyston v. Studd* (1574), Plowden, 465.] See also Viner's Abr. Statutes, E. 6: Com. Dig. tit. Parliament, R. 10; *Wedderburn v. Duke of Atholl*, (1900) A. C. 403, 419, and *ante*, p. 74.

(x) In *Greaves v. Tofteld* (1880), 14 Ch. D. 563, 578, Bramwell, L.J., said that a good many of the doctrines of courts of equity seemed to him to be "the result of a disregard of general principles and general rules in the endeavour to do justice more or less fanciful in certain particular cases." See *Salt v. Marquis of Northampton*, (1892) A. C. 1.

(y) [See *Statute Book*, Statutory Law (2nd ed.), 311, endeavours to prove that statutes are still interpreted by the equity of the statute.] At p. 258, n., it is said that *Edwards v. Dick* (1821), 4 B. & Ald. 212, "seems to be decided on the equity of the particular case."]

the statute, and that it is much safer and better to rely on and abide by the plain words, although the Legislature might possibly have provided for other cases had their attention been directed to them.”] “Nor can I conceive,” said Buller, J., in *Jones v. Smart* (1785), 1 T. R. 44, 52, “that it is our province to consider whether such a law that has been passed is tyrannical or not.” [And in *Att.-Gen. v. Sillem* (1863), 2 H. & C. 431, 532, Bramwell, B., said: “I must here record the well-founded remark of the Attorney-General to the effect, that whereas formerly statutes, being extended equitably, as it was called, beyond their natural meaning, penal statutes were exempt from such extension; now that such liberties are not taken with statutes, there is no reason for construing penal statutes on such different principles as were formerly applied.”]

[But although the expression “equity of the statute” is not now favoured by the Courts, we find that a somewhat similar principle of construction is sometimes acted upon (s), and that if it is manifest that the principles of justice require something to be done which is not expressly provided for in an Act of Parliament, a Court of justice will take into consideration the spirit and meaning of the Act apart from the words; in other words, there is still, as Jessel, M.R., said, in *Re Bethlem Hospital* (1875), L. R. 19 Eq. 457, 459, “such a thing as construing an Act according to its intent, though not according to its words.”]

The question has often arisen in the Courts whether statutes prescribing notice of action as a condition precedent to a right to recover apply in the case where an injunction is sought to restrain the commission of some imminent breach of the law by the person entitled to notice.

The Courts have come thereon to the following conclusions:—

That application for an injunction (when that is the substantial part of the claim) is not prevented by a notice of action clause: *Att.-Gen. v. Hackney D. B.* (1875), L. R. 20 Eq. 626 (Bacon, V.-C.); *Flower v. Low Leyton L. B.* (1877), 5 Ch. D. 347 (Jessel, M.R.). For an injunction has no reference to the past save so far as it gives reason to apprehend future repetition of the wrong at which it is aimed.

In *Chapman v. Auckland Guardians* (1889), 23 Q. B. D. 294, 302, Bowen, L.J., said: “It is obvious that if such a section (requiring notice of action) were allowed to paralyse the operation of the remedy by injunction, a man would have to sit still while his property was threatened

(s) [Sedgwick, *Statutory Law* (2nd ed.), 250, this question is discussed in a chapter entitled “Strict and Liberal Construction.” But (as is pointed out *ante*, p. 12, and in Part III. ch. i. on “Penal Statutes”) all statutes, whatever may be the subject of them, are now construed according to the same rules, so that the question of “strict or liberal construction” does not now arise in the same way as formerly.]

with manifest, immediate, and in many cases it might be irreparable, injury.

“Where an action is really brought to obtain by injunction protection for the future, and not merely damages for the past, the Court, if convinced that the plaintiff can be sufficiently protected without an injunction, or will sufficiently be compensated by damages in lieu of injunction, is not precluded from giving damages by a notice of action clause.

“So far as the action relates to claims for damage in respect of the past, to allow such damage to be given in the absence of notice of action seems to me a breach of the provisions of an Act of Parliament which is intended to throw a shield over public bodies, such as the Local Board, in respect of claims of damages for what is past.”

The effect of these rules is in one sense to supply the equity of the statutes; but in truth no more is done than to construe the statute according to its plain language, though the effect of the construction is incidentally and equitably to deny to local authorities an overriding privilege, such as would exempt them from all forms of injunction (a).

5. [“It is a good general rule in jurisprudence,” said the Judicial Committee in *Ditcher v. Denison* (1857), 11 Moore, P. C. 325, 337; 14 Eng. Rep. 718, “that one who reads a legal document, whether public or private, should not be prompt to ascribe—should not, without necessity or some sound reason, impute—to its language tautology or superfluity, and should be rather at the outset inclined to suppose every word intended to have some effect or be of some use” (b).] And this is as justly and even more tersely put by Lord Bramwell, who says, in *Cowper-Esser v. Acton* L. B. (1889), 14 App. Cas. 153, 169: “The words of a statute never should in interpretation be added to or subtracted from, without almost a necessity.” “It may not always be possible,” said Jessel, M.R., in *Yorkshire Insurance Co. v. Clayton* (1881), 8 Q. B. D. 421, 424, “to give a meaning to every word used in an Act of Parliament,” and many instances may be found of provisions put into statutes merely by way of precaution. “Nor is surplusage, or even tautology,

Construction  
*ut res magis  
valeat quam  
pereat.*

(a) By the Public Authorities Protection Act, 1893 (56 & 57 Vict. c. 61), notice of action was abolished as to public authorities and persons within the scope of that Act, and actions for injunctions were put on the same footing in such cases as other legal proceedings. As to the scope of the Act, see *Att.-Gen. v. Margate Pier and Harbour Co.*, (1900) 1 Ch. 749; *Encycl. Loc. Govt. Law*, vol. i. tit. “Actions.”

(b) [Dwarris on Statutes (2nd ed.), p. 568, puts the rule thus: “The rule is to adopt such an interpretation, *ut res magis valeat quam pereat*.”] “It is,” said James, L.J., in *Re Florence Land Co.* (1878), 10 Ch. D. 544, “a cardinal rule of construction that all documents are to be construed *ut res magis valeat quam pereat*.” *Vide ante*, p. 70.

16 & 17 Vict.  
c. 51.

wholly unknown in the language of the Legislature" (c). ["A statute," said Lord Brougham, in *Auchterarder v. Lord Kinnoull* (1839), 6 Cl. & F. 646, 686, "is always allowed the privilege of using words not absolutely necessary."] And in *Income Tax Commissioners v. Pemsel*, (1891) A. C. 532, Lord Macnaghten observed (p. 589) that "it is not so very uncommon in an Act of Parliament to find special exemptions which are already covered by a general exemption." And Lord Herschell pointed out (p. 574), that "such specific exemptions are often introduced *ex majori cautela* to quiet the fears of those whose interests are engaged or sympathies aroused in favour of some particular institution, and who are apprehensive that it may not be held to fall within a general exemption." [In *Fryer v. Morland* (1876), 3 Ch. D. 685, Jessel, M.R., said, with regard to sect. 17 of the Succession Duty Act, 1853: "Why was it put in? Well, I don't know; I find it quite impossible to answer that question. It was probably put in to quiet the fears of persons interested in insurance companies *ex cautela*." And in *The Bank of London* (1871), 6 Ch. App. 421, 426, Lord Hatherley said: "I do not attach much importance to the exception of insurance companies in sect. 27 of 20 & 21 Vict. c. 14. I think it is mere surplusage, and unfortunately such surplusage is not uncommon in Acts of Parliament."] And in *Hough v. Windus* (1883), 12 Q. B. D. 224, 232, Brett, M.R., said: "I have come to the conclusion that in this Act of Parliament the Legislature intended to be verbose and tautologous." Nevertheless, as Lord Brougham said in *Auchterarder v. Lord Kinnoull* (d), "a statute is never supposed to use words without a meaning." [Therefore, if the language used in a statute is ambiguous and capable of two constructions, the rule, as enunciated by the Judicial Committee in *Cargo ex Argos* (1873), L. R. 5 P. C. 134, 153, is "to adopt that construction which will give some effect to the words rather than that which will give none."] "To reject words as insensible," said Erle, C.J., in *R. v. St. John Westgate* (1862), 2 B. & S. 706, "is the *ultima ratio* when an absurdity would follow from giving effect to the words of an enactment as they stand." In *R. v. Berchet* (1688), 1 Show. 108, it is said to be a known rule in the interpretation of statutes, that such a sense is to be made upon the whole as that no clause, sentence, or word shall prove superfluous, void, or insignificant, if by any other construction they may all be made useful and pertinent (e). [And in *Harcourt v. Fox* (1693), 1 Show. 532, Lord Holt said: "I think we should be very bold men, when we are entrusted with the interpretation of Acts of Parliament, to reject any words

(c) *Income Tax Commissioners v. Pemsel*, (1891) A. C. 532, 589, Lord Macnaghten.

(d) 6 Cl. & F. at p. 686.

(e) This dictum of Sir B. Shower is quoted by the Court in *R. v. Bishop of Oxford* (1879), 4 Q. B. D. 245, 261, as "a settled canon of construction."

that are sensible in an Act." This rule has often been acted upon. Thus, in *Green v. R.* (1876), 1 App. Cas. 513, 537, Lord Cairns states, as a reason for differing from the Court below, that "the learned judges absolutely reduce to silence the second part of this sentence, and make it altogether inapplicable." So in *Cooper v. Slade* (1853), 27 L. J. Q. B. 449, in the Court below, Bramwell, B., was inclined to treat the proviso at the end of sect. 2 of the Corrupt Practices Prevention Act, 1854, as mere surplusage; but in his advice to the House of Lords (f) 17 & 18 Vict. c. 102. he stated that he had altered his opinion as to this, because it appeared that a reasonable construction could be put upon that proviso, and therefore that construction ought to be adopted, instead of treating that proviso as if it did not exist at all. So in *East London Rail. Co. v. Whitechurch* (1874), L. R. 7 H. L. 81, Lord Cairns expressed a strong opinion against treating words in an Act of Parliament as surplusage, if any meaning can be put upon them. In that case the question at issue was as to the meaning of sect. 128 of the East London Railway Act, 1865, 28 & 29 Vict. c. li. which enacted that, "while the company are possessed under this Act of any lands liable to be assessed to any rate, they shall, from time to time, until the railway or works thereof are completed and assessed or liable to be assessed, be liable to" pay a deficiency rate. It was argued by the parish that this deficiency rate was payable until the whole railway was completed, thus treating the words "and assessed, or liable to be assessed," as mere surplusage. But the House of Lords held that these words were not to be so treated. "If," said Lord Cairns, "your lordships were to adopt this construction, the consequence would be that all those words which follow the word 'completed' might be entirely removed, and ought to be removed, out of the clause, because, if the deficiency rate is payable before the railway is completed from end to end, the words that ought to have been used would be simply 'until the railway or the works thereof shall be completed,' and those words following, 'and assessed, or liable to be assessed,' ought not to be added; they would be entirely superfluous."]

6. [But a Court of law will reject words as surplusage (g) if it appears that, by "attempting to give a meaning to every word, we should," as Coleridge, J., said in *R. v. East Ardsley* (1850), 14 Q. B. 801, "have to make the Act of Parliament insensible," or [if it is clear that otherwise the manifest intention of the Legislature will be defeated. Thus, in *Fisher v. Val de Travers Asphalt Co.* (1875), 1 C. P. D. 259, a question arose whether a judge belonging to a particular Divisional Court was entitled to hear an appeal from that Court if he himself

Rejection of surplusage.

(f) 6 H. L. C. at p. 766.

(g) "Nothing can be more mischievous than to attempt to wrest words from their proper and legal meaning only because they are superfluous": *Hough v. Windus* (1883), 12 Q. B. D. 224, 229, Lord Selborne.

had not taken part in the first hearing. The Judicature Act, 1875 (38 & 39 Vict. c. 77), s. 4, enacted that "no judge shall sit as a judge on the hearing of an appeal from any judgment or order made by himself, or made by any Divisional Court of which he was *and is* a member." It was held that, in order to give effect to the intention of the Legislature, the words "and is" must be rejected, "for there could be no reason why a judge should not hear an appeal from a judgment or order in the making of which he had taken no part." And in *U. S. v. Stern* (1867), 5 Blatchford (U. S. Cir. Ct.), 512, upon a statute enacting that a person who shall do a certain act, and shall be thereof convicted, was to be liable to indictment, held that the words "shall be thereof convicted" must necessarily be rejected (*h*) as surplusage.

Defective drafting.

The question at times arises whether, admitting a statute to have a certain intention, it must, through defective drafting or faulty expression, fail of its intended effect. The rule on this subject laid down in the Privy Council in *Salmon v. Duncombe* (1886), 11 App. Cas. 627, 634, is as follows:—"It is, however, a very serious matter to hold that, where the intention of a statute is clear, it shall be reduced to a nullity by the draftsman's unskilfulness or ignorance of law. It may be necessary for a Court of justice to come to such a conclusion, but their lordships hold that nothing can justify it except necessity, or the absolute intractability of the language used" (*i*).

Meaning of obscure enactment sometimes arrived at by observing that certain words are designedly omitted.

7. [Sometimes, if the meaning of an enactment is not plain, light may be thrown upon it by observing that certain words "have been,"] as Brett, L.J., said in *Union Bank of London v. Ingram* (1882), 20 Ch. D. 463, 465, "designedly omitted." Thus, in *Att.-Gen. v. Sillem* (1863), 2 H. & C. 431, 515, in discussing the meaning of the old Foreign Enlistment Act (59 Geo. 3, c. 69), s. 7, which enacts that, "if any person . . . equip, furnish, fit, or arm . . . any vessel with intent that such vessel shall be employed in the service of any foreign prince," for warlike purposes, such person shall be liable to certain punishments, Pollock, C.B., pointed out that the clause did not contain the word "build." To this the Attorney-General replied: "It is dangerous to try to explain a statute by words that are not to be found in it." Pollock, C.B., however, in his judgment, said as to this: "On the first impression, the objection of the Attorney-General seems not at all unreasonable, but the answer, on a little consideration, is quite obvious. In order to know what a statute *does* mean, it is one important step to know what it *does not* mean; and if it be quite clear that there is something which it *does not* mean, then that which is suggested or supposed

(*h*) For "conviction," "indicted," the draftsman doubtless meant to write "indictment," "convicted."

(*i*) *Ante*, p. 25.



to be what it *does* mean must be in harmony and consistent with what it is clear that it *does not* mean. What it forbids must be consistent with what it permits. The 7th section contained the words 'equip, furnish, fit out, and arm,' but it does not contain the word 'build,' and I think no one can doubt that that word was purposely omitted from the Act" (*k*). The Licensing Act, 1872, s. 16, consists of a series of clauses headed "Offences against Public Order." The section contains three sub-sections, the first of which defines offences which must be "knowingly" committed; the other two sections omit the word "knowingly." Consequently, in *Mullins v. Collins* (1874), L. R. 9 Q. B. 292, where the defendant was prosecuted because his servant supplied a constable on duty with drink, it was held to be no defence on his part that his servant had done this without his knowledge. "The appellant," said Archibald, J. (p. 295), "has been convicted under the second sub-section, where the word 'knowingly' is omitted. This seems to point to the conclusion that the licensed victualler will be liable for the act of his servant, although he himself has not knowingly committed an offence against the second sub-section" (*l*)]. In *Police Commissioner v. Cartman*, (1896) 1 Q. B. 655, it was held that the act of the servant, to make the master liable, must be within the general scope of his authority; and in *Sherras v. De Rutzen*, (1895) 1 Q. B. 918, it was held that no liability was incurred under sect. 16, where the servant, through the structure of the bar, did not see that the man being served was a constable on duty.

The use of the word "permitting" in sect. 13 of the same Act has been held to make proof of knowledge necessary to constitute an offence within the clause, although in other sections (*e.g.* sect. 14) the Legislature has used the words "knowingly permits" (*m*).

(*k*) The Act is now repealed and superseded by 33 & 34 Vict. c. 90, which contains (sect. 8) the word "build" as well as "equip"; and see sect. 30.

(*l*) See also *Bond v. Evans* (1888), 21 Q. B. D. 249; *Dyke v. Gower*, (1892) 1 Q. B. 220; and as to *mens rea*, *post*, Part III. ch. ii.

(*m*) *Somerset v. Wade*, (1894) 1 Q. B. 574; and see App. A., *s. v.* Permit.

## CHAPTER III.

WHAT MAY AND WHAT MAY NOT BE IMPLIED IF THE  
MEANING IS NOT PLAIN.

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Omission may be supplied by implication.

1. [If the meaning of a statute is not plain, it is permissible in certain cases to have recourse to a construction by implication, and to draw inferences or supply apparent omissions.] But the general rule is, as Patteson, J., said in *King v. Burrell* (1840), 12 A. & E. 460, 468, "not to import into statutes words which are not to be found there," and [because there are particular purposes for which express language is absolutely indispensable (a).]

(a) In order to prevent existing words from being deprived of all meaning.

(1) It has already been stated [if a matter is altogether omitted from a statute (b), it is clearly not allowable to insert it by implication, for to do so would, as James, L.J., said in *Re Successum* (1876), 3 Ch. D. 463, 472, "not be to construe the Act of Parliament, but to alter it" (c). But where the alternative lies between either supplying by implication words "which," as the Court said in *Jubb v. Hull Dock Co.* (1846), 9 Q. B. 455, "appear to have been accidentally omitted," or adopting a construction which deprives certain existing words of all meaning, it is usual to supply the words. Thus, in *Re Wainewright* (1843), 1 Phil. 261, Lord Lyndhurst, C., said, as to sect. 33 of the Fines and Recoveries Act, 1833: "There is an omission here which it is proper to notice. The words are, 'If any person, protector of

3 & 4 Will. 4, c. 74.

(a) See *post*, p. 109.

(b) *Ante*, p. 71.

(c) *Ante*, p. 71.

a settlement, shall be convicted of treason or felony, or if any person, not being the owner of a prior estate under a settlement, shall be the protector of such settlement and shall be an infant, or if it shall be uncertain whether such last-named person be living or dead, then His Majesty's High Court of Chancery shall be the protector of such settlement, in lieu of the person who shall be an infant or whose existence cannot be ascertained'—omitting the case of a person convicted of treason or felony. But I think that the omission must be supplied by implication, otherwise no effect can be given to the previous words, 'if any person, protector of a settlement, shall be convicted of treason or felony.' Now these words cannot be struck out of the Act, and it is much more natural to supply the words, 'in lieu of the person who shall be convicted,' than to adopt a construction which would deprive the preceding words of all meaning." The Common Law Procedure (Ireland) Act, 1853, s. 135, enacted 16 & 17 Vict.  
c. 113. that, "if a debtor have an estate or interest in any stock, funds, annuities, or shares or *money* . . . it shall be lawful for the Court to make such order as to such stock, funds, annuities, shares, and the dividend, interest and annual produce thereof . . . but no such order shall prevent the Bank of Ireland from permitting any transfer of such stocks, funds, annuities, and shares or *money*. . . ." In *Quin v. O'Keefe* (1859), 10 Ir. C. L. R. 407, the question arose whether, as this section omitted the word "*money*" in the second clause, it was competent for the Court to make an order with respect to *money*. The Court, following the last-mentioned case of *Re Waincurright*, held that it was competent for them to supply this word by implication, and Lefroy, C.J., said: "I admit that in sect. 135, where it is said that it shall be lawful for the Court to make such order, the word *money* is dropped, and that the order is only to be made 'as to such stocks, funds, annuities, shares, and the dividend, interest, and annual produce thereof,' but in a subsequent part of the section the word '*money*' is introduced, thus clearly bringing it within the operation of the proviso, and if the proviso is to have any effect at all in respect of it, it must be upon the supposition that it was contemplated as being otherwise included in the body of the section. . . . Unless, therefore, we insert the word '*money*' into the enacting part of the section, that section as to *money* will be completely nugatory." But in *Underhill v. Longridge* (1859), 29 L. J. M. C. 65, the Court declined to act upon the authority of *Re Waincurright* (1843), 1 Phil. 261, or to supply certain words by implication. The later case turned on 18 & 19 Vict. c. 108, s. 9 (rep.), which enacted that "if loss of life to any person employed in a coal mine occurs by reason of any accident within such coal mine, or if any serious personal injury arises from explosion therein, the owner of such mine shall, within twenty-four hours next after such loss of life, send notice of such accident," &c., or be liable to

a penalty. An accident having occurred which caused "serious personal injury," but *not* loss of life, it was contended that the owner of the mine ought to have sent notice of the accident, for it was argued that it was quite clear that there was an accidental omission after the words "such loss of life," and that the Legislature must have intended to insert the words "or such serious personal injury," otherwise the words "or if any serious personal injury arises from explosion therein" are wholly inoperative. The Court, however, declined to imply that these words had been omitted by accident, for "we cannot," said the Court, "take upon ourselves the office of the Legislature" (d).]

(b) In the case of enabling statutes which omit to mention some detail.

[If a statute is passed for the purpose of enabling something to be done, but omits to mention in terms some detail which is of great importance (if not actually essential) to the proper and effectual performance of the work which the statute has in contemplation, the Courts are at liberty to infer that the statute by implication empowers that detail to be carried out. Thus, in *Cookson v. Lee* (1854), 23 L. J. Ch. 473, an Act vested certain lands in trustees for the purpose of enabling them to sell the lands for building purposes, but the Act contained no express power to expend any portion of the purchase-moneys in setting out the lands or in making roads. Under these circumstances the Court held that, having regard to the object of the Act—namely, the sale of the property as building land—such power ought to be implied. "In point of fact," said the Court, "the Act did not contain the power, though Acts of Parliament of a similar nature generally do so; but it is a very natural question whether, though it does not in terms do it, it does not do it by implication—whether we must not infer that, from the powers given, the Legislature considered that they had given the power which is contended for, and whether, in directing something to be done, they must not be considered by necessary implication to have empowered that to be done which was necessary in order to accomplish the ultimate object."]

The Courts have sometimes felt constrained to narrow the effect of a repealing section in order to give full effect to the intention of the Act containing it. A local Act of 1877 (40 & 41 Vict. c. cxxxv.), by its 33rd section, provided for the purchase of lands for the accommodation of the working classes likely to be displaced by certain metropolitan improvements. A subsequent Act of 1882 (45 & 46 Vict. c. cxxii.), by sect. 3, provided that the provisions of sect. 33, *supra*, should cease to be in force with respect to certain lands mentioned, and that in relation

(d) In Maxwell on the Interpretation of Statutes (3rd ed.), 385, it is said that if in this case the statute had been a remedial one, instead of being a penal statute, "the omission would probably have been supplied," as it was in the case of *Re Wainwright* (1843), 1 Phil. 261. This may be so, but the Court did not give this as their reason for refusing to supply the omission; and see *Quin v. O'Keefe* (1859), 19 Ir. C. L. Rep. 407, cited *ante*, p. 107.

thereto the earlier Act should be read as though sect. 33 were not contained therein. In *Wigram v. Fryer* (1887), 36 Ch. D. 87, North, J., held—

- (1) That nothing outside the two Acts enabled the local authority to erect buildings for housing the working classes;
- (2) That the Legislature plainly intended that such buildings should be erected; and
- (3) That, to give effect to this intention, the Court must imply that the later Act conferred upon, or preserved to, the authority the powers expressly conferred by the repealed section of the Act of 1877.

The learned judge was amply justified in saying that “it is a very lamentable way of legislating that we should be driven to get at the meaning of these Acts by removing difficulties (as far as can be done) by construction rather than that the intention of the Legislature should be clearly expressed upon the face of the Act.”

2. [Express and unambiguous language appears to be absolutely indispensable in statutes passed for the following purposes:—  
 (1) Imposing a tax<sup>(e)</sup> or charge; (2) Conferring or taking away legal rights, whether public or private; (3) Altering or excepting from the operation of clearly established principles of law; (4) Altering the jurisdiction of Courts of law; (5) Cutting down the effect of a written instrument.]

Express language necessary in certain cases.

(1) [If a statute professes to impose a charge, “the rule,” said the Judicial Committee in *Oriental Bank v. Wright* (1880), 5 App. Cas. 842, 856, is “that the intention to impose a charge upon a subject must be shown by clear and unambiguous language”<sup>(f)</sup>. This accords with the view expressed by Parke, B., in *In re Mickelthwait* (1855), 11 Ex. 452, 456: “It is a well-established rule that the subject is not to be taxed without clear words for that purpose; and also that every Act of Parliament must be read according to the natural construction of its words.” In *Partington v. Att.-Gen.* (1869), L. R. 4 H. L. 100, 122, Lord Cairns said: “I am not at all sure that, in a case of this kind—a fiscal case—form is not amply sufficient; because, as I understand the principle of all fiscal legislation, it is this: if the person sought to be taxed comes within the letter of the law he must be taxed, however great the hardship may appear to the judicial mind to be. On the other hand, if the Crown, seeking to recover the tax, cannot bring the subject

(1) For imposing a tax or charge.

<sup>(e)</sup> Also exempting from a tax or rate. “Duties given to the Crown,” said Lord Selborne in *Mersey Docks v. Lucas* (1833), 8 App. Cas. 891, 902, “taxes imposed by the authority of the Legislature, by public Acts for public purposes, cannot be taken away by general words in a local and personal Act. . . .” As to exemption from rates, see *Sion College case*, (1901) 1 K. B. 617; *Mayor, &c. of London v. Netherlands Steamboat Co.*, (1906) A. C. 262, 268.

<sup>(f)</sup> To same effect, see *Simms v. Registrar of Probates*, (1900) A. C. 323, 337.

within the letter of the law, the subject is free, however apparently within the spirit of the law the case might otherwise appear to be. In other words, if there be admissible, in any statute, what is called an equitable construction, certainly such a construction is not admissible in a taxing statute, where you can simply adhere to the words of the statute” (g). “Therefore the Crown fails if the case is not brought within the words of the statute; interpreted according to their natural meaning, they must fail; and if there is a case which is not covered by the statute so interpreted, that can only be cured by legislation, and not by an attempt to construe it benevolently in favour of the Crown” (h). “In construing such Acts,” said Lord Halsbury in *Lord Advocate v. Fleming*, (1896) App. Cas. 152, “we have no governing principle of the Act to look at; we have simply to go on the Act itself, to see whether the duty claimed is that which the Legislature has enacted”; and in *Tennant v. Smith*, (1892) A. C. 150, 154, he said: “In a taxing Act it is impossible, I believe, to assume any intention, any governing purpose in the Act except to take such tax as the statute imposes. . . . Cases, therefore, under the Taxing Acts always resolve themselves into the question whether or not the words of the Act have reached the alleged subject of taxation.” This rule, said Lord Cairns in *Pryce v. Monmouthshire Canal Co.* (1879), 4 App. Cas. 197, 202, “probably means little more than this, that inasmuch as there was not any *à priori* liability in a subject to pay any particular tax, nor any antecedent relationship between the taxpayer and the taxing authority, no reasoning founded upon any supposed relationship of the taxpayer and the taxing authority could be brought to bear upon the construction of the Act, and therefore the taxpayer has a right to stand upon the literal construction of the words used, whatever might be the consequence.” The rule, while valuable as a caution, cannot be taken as substantially varying the ordinary rules for construing all statutes. In *Att.-Gen. v. Carlton Bank*, (1899) 2 Q. B. 158, 164, Russell, L.C.J., said: “I see no reason why any special canons of construction should be applied to any Act of Parliament, and I know of no authority for saying that a taxing Act is to be construed differently from any other Act. The duty of the Court is, in my opinion, in all cases the same, whether the Act to be construed relates to taxation or to any other subject, viz., to give effect to the intention of the Legislature, as that intention is to be gathered from the language employed, having regard to the context in connection with which it is employed. The Court must no doubt ascertain the subject-matter to which

(g) Quoted and adopted in *Att.-Gen. v. Earl of Selborne*, (1902) 1 K. B. 388, 396, Collins, M.R., in a case as to succession duty. See also *Cox v. Rabbits* (1878), 3 App. Cas. 473, 478, Lord Cairns. “A taxing Act must be construed strictly. You must find words to impose the tax, and if words are not found which impose the tax, it is not to be imposed.”

(h) *Att.-Gen. v. Earl of Selborne*, l. c. p. 396, Collins, M.R.

the particular tax is by the statute intended to be applied, but when once that is ascertained, it is not open to the Court to narrow or whittle down the operation of the Act by considerations of hardship or business convenience, or the like." [If a statute imposes a tax upon the whole United Kingdom, it is construed so far as its terms allow in such a way that like interests in property may be subjected to like charges, where-soever in the United Kingdom the property is situate, and so that all the subjects of each kingdom may be taxed equally under the same circumstances. Therefore, as Lord Campbell said in *Braybrooke v. Att.-Gen.* (1861), 9 H. L. C. 150, 165, such a statute must be "construed, not according to the technicalities of the law of real property in England or in Scotland, but according to the popular use of the language employed."] But "it is idle to suggest that in the taxing Acts, where they are dealing with English finance, the words 'executor' or 'administrator,' which terms we use popularly as applicable to a person who fills that character, to whatever country he belongs, are used in these statutes in any other sense than as meaning an English executor or an English administrator dealing with our own financial system" (i).

The Courts, in dealing with taxing Acts, will not presume in favour of any special privilege of exemption from taxation. Said Lord Young in *Hogg v. Parochial Board of Auchtermuchty* (1880), 7 Rettie (Sc.), 986: "I think it proper to say that, *in dubio*, I should deem it the duty of the Court to reject any construction of a modern statute which implied the extension of a class privilege of exemption from taxation, provided the language reasonably admitted of another interpretation."

[The rule as to the need of express words to impose] or exempt [is acted upon with regard to all kinds of charges. Thus, with regard to dock dues, in *Gildart v. Gladstone* (1809), 11 East, 675, 684, the Court, in deciding that the dock due in question was rightfully claimed, said: "If the words of the statute would fairly admit of a different meaning, it would be right to adopt that which would be most favourable to the interest of the public . . . because the public ought not to be charged unless it is clear that it was so intended; but we think that the words here used are plain."]

In *Stockton and Darlington Rail. Co. v. Barrett* (1844), 11 Cl. & F. 590, Lord Lyndhurst, C., said: "If it was a case of doubt, the rule is in Acts of this nature (a railway Act levying charges) to adopt the construction most beneficial to the public"; and this rule was adopted as to canal charges in *Pryce*

(i) *New York Breweries Co. v. Att.-Gen.*, (1899) A. C. 62, 68, Halsbury, L.C. The question there was whether an English company, in which shares were held by a foreign testator domiciled abroad, had rendered itself liable to tax under 55 Geo. 3, c. 184, s. 7, and 28 & 29 Vict. c. 104, s. 57, by paying over to his executors dividends and interest on the shares so held, though they had not obtained probate in England.

- Rates. *v. Monmouthshire Canal Co.* (1879), 4 App. Cas. 205. By the Poor Relief Act, 1601 (43 Eliz. c. 2), s. 1, occupiers of coal mines are to be rated for the relief of the poor, but no other mines are mentioned in the statute. In *R. v. Sedgley* (1831), 2 B. & Ad. 65, it was argued that the coal mines might be considered as having been mentioned in the statute as examples, and that, in fact, it was intended that the occupiers of all kinds of mines should be rated. This argument was not acceded to, and it was held that, according to the maxim *expressio unius*, the expression "coal mines" had the effect of excluding all other mines.
- Stamps. [With regard to the Stamp Acts, Lord Tenterden said, in *Tomkins v. Ashby* (1827), 6 B. & C. 541, 542: "A stamp was not necessary in this case. Statutes imposing duties are to be so construed as not to make any instruments liable to them unless manifestly within the intention of the Legislature." In *Leeds and Liverpool Canal v. Hustler* (1823), 1 B. & C. 424, it appeared that by 10 Geo. 3, c. 114, it is enacted that no boat of less burden than twenty tons shall pass any of the locks without paying tonnage equal to a boat of twenty tons, but no toll was imposed upon empty boats; and that by the subsequent Act of 23 Geo. 3, c. 47, boats of greater burden than twenty tons, but carrying less than that quantity of cargo, were put upon the same footing as boats of twenty tons. But no toll was expressly imposed upon empty boats by this subsequent statute any more than it had been by the former statute. Nevertheless, it was argued that by the subsequent statute a toll upon empty boats was imposed by inference. To this argument the Court declined to accede. "Those who seek," said Bayley, J., "to impose a burden upon the public, should take care that their claim rests upon plain and unambiguous language."]
- Tolls. The same rule is applied by the Scotch Courts, and is thus stated by Inglis, L.P., in *Laird v. Clyde Navigation Trustees* (1879), 6 Rettie (Sc.), 785: "No body of statutory trustees or other persons can be allowed to levy a toll or duty unless they have unequivocal statutory authority for so doing; and in interpreting enactments imposing tolls, rates, or dues, I think the Court is bound to construe the Act according to its ordinary meaning and use."

- (2) For conferring rights. (2) [Rights cannot be conferred by mere implication from the language used in a statute, but there must be a clear and unequivocal enactment (*j*). By sect. 9 of the Endowed Schools Act, 1869, it was enacted that whenever in Acts relating to municipal elections "words occur which import the masculine gender, the same shall be held to include females." By the Married Women's Property Act, 1870, coverture ceased to be a bar to holding property. It was contended, in *R. v. Harrald*
- 32 & 33 Vict. c. 55.
- 33 & 34 Vict. c. 93.

(*j*) Therefore, "a saving clause," as Wood, V.-C., said in *Arnold v. Mayor of Gravesend* (1856), 2 K. & J. 574, 591, "cannot be taken to give any right which did not exist already." As to provisoes, see *post*, p. 198.



(1872), L. R. 7 Q. B. 362, that the former enactment might reasonably be held to apply, not only to single, but also to married women; but it was held otherwise. "By the common law," said Cockburn, C.J., "a married woman is incapable of voting. . . . It is quite clear that the Act of 1869 had not married women in its contemplation, nor can it be supposed that the subsequent statute of 1870, by which the status of married women with regard to the power to hold property has been recognised and established, and which was passed *alio intuitu*, has by a side wind given them political and municipal rights" (k).] And the same opinion was given with reference to the eligibility of women to municipal office under the Local Government Act, 1888, in *Beresford-Hope v. Sandhurst* (1889), 24 Q. B. D. 79, and *De Souza v. Cobden*, (1891) 1 Q. B. 687.

51 & 52 Vict.  
c. 41, s. 75.

(3) In *Re Cuno* (1883), 43 Ch. D. 12, 17, Bowen, L.J., said: "In the construction of statutes you must not construe the words so as to take away rights which already existed before the statute was passed, unless you have plain words which indicate that such was the intention of the Legislature."

(3) To take  
away public  
or private  
rights.

[Therefore rights, whether public or private, are not to be taken away, or even hampered (l), by mere implication from the language used in a statute], unless, as Fry, J., said in *Mayor, &c. of Yarmouth v. Simmons* (1878), 10 Ch. D. 518, 527, "the Legislature clearly and distinctly authorise the doing of something which is physically inconsistent with the continuance of an existing right" (m). "In order to take away a right," said the Judicial Committee in *Western Counties Rail. Co. v. Windsor, &c. Rail. Co.* (1882), 7 App. Cas. 178, 189, "it is not sufficient to show that the thing sanctioned by the Act, if done, will of sheer physical necessity put an end to the right; it must also be shown that the Legislature have authorised the thing to be done at all events, and irrespective of its possible interference with existing rights." [Sect. 2 of the Gifts for Churches Act, 1811, enacts that certain lords of manors may grant for public purposes any waste land of the manor, "freed and absolutely discharged from all rights of common." In *Forbes v. Ecclesiastical Commrs.* (1872), L. R. 15 Eq. 51, 53, it was contended that this enactment authorised the lord to discharge the land, not only of manorial right, but also of public or customary rights. But it was held that "the language of the statute was fully satisfied by interpreting it to mean, what indeed is the plain and natural meaning of the words used, a power to discharge the land of manorial rights. To hold otherwise would be to destroy by a side wind public

51 Geo. 3,  
c. 115.

(k) See also *Chorlton v. Lings* (1868), L. R. 4 C. P. 374.

(l) Cf. *L. N. W. R. v. Evans*, (1893) 1 Ch. 16.

(m) I.e., the words taking away the right should be clear and unambiguous. See *Campbell v. Macdonald* (1902), 22 N. Z. L. R. 65, 69, a case in which it was contended that Fisheries Protection Acts of New Zealand justified regulations preventing a man from fishing *ex adverso* his own lands.

rights which were not in the contemplation of the Legislature" <sup>(n)</sup>.]

11 & 12 Vict.  
c. 12.

[In *Gray v. R.* (1844), 11 Cl. & F. 427, the question arose whether the right of a person tried for felony to challenge peremptorily twenty of the jurors summoned to try him extended to a new felony created by the Treason Felony Act, 1848. It was held that it did. "A prisoner," said Tindal, C.J. (at p. 480), "is not to be deprived by implication of a right of so much importance to him, given by the common law and enjoyed for many centuries, unless such implication is absolutely necessary for the interpretation of the statute" <sup>(o)</sup>.] Again, it being a recognised right that, as Erle, C.J., said in *Cooper v. Wandsworth D. B. W.* (1863), 14 C. B. N. S. 180, 187, "no man is to be deprived of his property without his having an opportunity of being heard," it was laid down in that case by Byles, J. (at p. 194), that "although there may be no positive words in a statute requiring that a party shall be heard, yet a long course of decisions, beginning with *Dr. Bentley's case* (1722), 1 Str. 557; *Ld. Raym.* 1334; 8 Mod. 148; *Fort.* 202, established that the justice of the common law will supply the omission of the Legislature." [So also with regard to the right of trial by jury. "An Act of Parliament," said Best, C.J., in *Looker v. Hulcomb* (1827), 4 Bing. 183, 188, "which takes away the right of trial by jury . . . ought to receive the strictest construction; nothing should be holden to come under its operation that is not expressly within the letter and spirit of the Act" <sup>(p)</sup>.]

Reservation  
of rights  
*ex abundanti  
cautelâ.*

[In Acts of Parliament, it has sometimes, *ex abundanti cautelâ*, been thought necessary specially to reserve rights. For instance, in certain of the Acts regulating the law of bankruptcy <sup>(q)</sup>, the privilege of freedom from arrest belonging to peers of Parliament is specially preserved. But this special reservation was unnecessary, for, said Lord Hatherley in *Duke of Newcastle v. Morris* (1870), L. R. 4 H. L. 661, 671, "it is

<sup>(n)</sup> [In *R. v. Strachan* (1872), L. R. 7 Q. B. 463, it was argued that, by virtue of 33 & 34 Vict. c. 97, sch. (Voting paper), which enacted that "any instrument for the purpose of voting by any person entitled to vote at any meeting," should be liable to a penny stamp duty, it became necessary for voting papers used at municipal elections to be stamped. "But," said Cockburn, C.J., "it can never have been the intention of the Legislature, by such an enactment as this—viz., by the use of the words 'at any meeting' in the schedule—to have altered the whole system of voting at public elections." Cf. *Murray v. Drew*, (1893) A. C. 300.

<sup>(o)</sup> [This dictum of Tindal, C.J., was cited with approval by the Judicial Committee in giving judgment in *Levinger v. R.* (1870), L. R. 3 P. C. 282, 289, a case in which a similar point was raised. See this case cited below, Part II. ch. iv., on "Effect of Statutes on the Common Law."]

<sup>(p)</sup> In *Ex parte Carew*, (1897) A. C. 719, it was held that an Order in Council under the Foreign Jurisdiction Act, 1843 (6 & 7 Vict. c. 94), could lawfully reduce the number of jurors from twelve to five.

<sup>(q)</sup> [4 Geo. 3, c. 33, s. 4, and 12 & 13 Vict. c. 106, s. 66; see the argument of Sir R. Palmer in *Duke of Newcastle v. Morris* (1870), L. R. 4 H. L. 661.] In the Palmer Act (19 & 20 Vict. c. 16) and the Central Criminal Court Act, 1834 (4 & 5 Will. 4, c. 36), a similar reservation is made as to the trial of peers.

not because, *ex majori cautela*, several Acts of Parliament have thought it necessary specially to reserve that privilege, that it is to be held to be abolished and annihilated in every other Act of Parliament in which it is not expressly reserved.”]

[The effect of an Act of Parliament upon a private right was much discussed in *Walsh v. Secretary of State for India* (1863), 10 H. L. C. 367. In that case it appeared that Lord Clive, whose representative the plaintiff was, had transferred to the East India Company a sum of money, and they had covenanted to pay out of that sum pensions to disabled officers and soldiers so long as the company employed troops in India, and if they ceased to employ troops, the money was to be handed back to Lord Clive or his representatives. By the Government of India Act, 1858, the government of India was transferred from the company to the Crown, and the same Act vested in the Crown all the funds at the disposal of the company, and it was contended on the part of the Crown that, although the company had ceased to employ troops in India, this Act had deprived the plaintiff of his right to have the money handed back to him. The House of Lords, however, did not adopt this view, and they held that as this claim of Lord Clive’s representative against the company was neither expressly released nor prohibited by the Act in question, that Act could not in any manner avail to take away the right of action under that covenant. “This result,” said Lord Westbury, “follows of necessity, consistently with every rule by which Acts of Parliament ought to be interpreted, especially the rule that they should be so interpreted as in no respect to interfere with or prejudice a clear private right or title, unless the private right or title is taken away *per directum*.” In *Randolph v. Milman* (1868), L. R. 4 C. P. 107, it was contended that by virtue of the Ecclesiastical Commissioners Act, 1840, passed for the purpose of vesting in the Commissioners the estates of certain deaneries, the non-residentiary prebendaries of cathedrals were deprived of their right to vote at the election of proctors. They had enjoyed this right from time immemorial, and there being no express words in the statute by which the right was taken away, the Court decided that they still retained the right. “We agree,” said the Court (at p. 113), “with the principle of the law stated by Sir Roundell Palmer at the outset, that vested rights are not to be taken away without express words or necessary intendment or implication; and upon adverting to the statute, it will be found that there is no express extinction of the right here claimed, and no necessary implication or intendment to that effect.” And the rule is thus expressed by Bramwell, L.J., in *Wells v. London, Tilbury, &c. Rail. Co.* (1877), 5 Ch. D. 126, 130: “The Legislature never takes away the slightest private right without providing compensation for it, and a general recital in an Act providing for the execution of public works, that it is expedient that the works should be done, is

never supposed to mean that in order to carry them out a man is to be deprived of his private rights without compensation.”]

(4) To alter a clear principle of law.

(4) [To alter any clearly established principle of law a distinct and positive legislative enactment is necessary (r). “Statutes,” said the Court of Common Pleas in *Arthur v. Bokenham* (1708), 11 Mod. 150, “are not presumed to make any alteration in the common law further or otherwise than the Act does expressly declare.” In *Rolfe v. Flower* (1866), L. R. 1 P. C. 27, it was contended that it was the intention of the Victorian Legislature by their Act of 5 Vict. No. 17, s. 39, to alter the well-known principle of bankruptcy law, that a joint creditor having a security upon the separate estate is entitled to prove against the joint estate without giving up his security. In deciding against this contention the Judicial Committee said (p. 48): “If this were the establishment of a new code of insolvent law, and it was the object of the colonial legislature to prevent the operation of a rule which they considered unjust, it is hardly to be imagined that they would have committed their intention to the equivocal meaning of a few words in a single section of the Act.”]

(5) To add to or take from jurisdiction of superior Court.

(5) [A distinct and unequivocal enactment is also required for the purpose of either adding to or taking from the jurisdiction of a superior Court of law. “I cannot think,” said Grove, J., in *Cousins v. Lombard Bank* (1876), 1 Ex. D. 404, 406, “that by 38 & 39 Vict. c. 50, s. 6 (County Courts Act, 1875, rep.), the Legislature contemplated an extension of the right of appeal. . . . The change would have been great in principle, and if the Legislature had intended to introduce it, clear language would have been employed.” Thus, in *Smith v. Brown* (1871), L. R. 6 Q. B. 729 (s), it was argued that sect. 7 of the Admiralty Court Act, 1861, which gives jurisdiction to the Admiralty Court over “any claim for damage done by a ship,” gave the Admiralty Court jurisdiction to entertain a suit on account of personal injuries occasioned by the collision of two vessels. “But,” said the Court, “it seems to us impossible to suppose that the Legislature can have intended under a general enactment like the present, as it were by a side wind, to effect so material a change in the rights and relative positions of the parties concerned in such an action.” Similarly, in *Att.-Gen. v. Sillem* (1864), 10 H. L. C. 704, the question arose whether sect. 26 of the Queen’s Remembrancer Act, 1859, which gave the Court of Exchequer power to make rules as to the “process, practice, and mode of pleading” on the revenue side of the Court, enabled them to grant a right of appeal in such cases to the Exchequer Chamber, a right which had not previously existed. The House of Lords

24 & 25 Vict.  
c. 10.

22 & 23 Vict.  
c. 21.

(r) See this point further discussed in chapter on “Effect of Statutes on the Common Law,” Part II. ch. iii.

(s) Approved in *Seward v. Vera Cruz* (1884), 10 App. Cas. 59, H. L.

decided that the Court of Exchequer had no such power, there being no express mention in the Act as to giving any new right of appeal. "The creation," said Lord Westbury, "of a new right of appeal is plainly an act which requires [distinct] legislative authority" (t).]

[Similarly as to ousting the jurisdiction of a superior Court. In *Balfour v. Malcolm* (1842), 8 Cl. & F. 485, 500, Lord Campbell said: "There can be no doubt that the principle is that the jurisdiction of the supreme Courts can only be taken away by positive and clear enactments in an Act of Parliament." "No rule is better understood," said Pollock, B., in *Oram v. Brearey* (1877), 2 Ex. D. 346, 348, "than that the jurisdiction of a superior Court is not to be ousted unless by express language in, or obvious inference from, some Act of Parliament" (u). ["The general rule undoubtedly is," said Tindal, C.J., in *Albon v. Pyke* (1842), 4 M. & G. 421, 424, "that the jurisdiction of superior Courts is not taken away except by express words or necessary implication" (x).] Therefore, inasmuch as the power of the Court of Queen's Bench to change the *venue* is a common law power, "words," said Lord Campbell in *Southampton Bridge Co. v. Southampton L. B.* (1858), 8 E. & B. 801, "should be very strong which are relied upon to take away such power." [This general rule, when relating to the trial of new offences created by statute, was well explained by Lord Mansfield in *Hartley v. Hooker* (1777), 2 Cowp. 523. In that case a *qui tam* information was brought in the Sheriff's Court of the city of York, under 14 Car. 2, c. 26, which enacted that "all offences shall be determined . . . in the Court of Record of the city wherein such offence shall be committed," and it was sought to remove the information into the Court of King's Bench. It was objected, however, that the jurisdiction of the King's Bench was taken away by the words of the statute. But Lord Mansfield said as follows: "If a *new* offence is created by statute, and a special jurisdiction *out of the course of the common law* is prescribed, it is to be followed. . . . But where a new offence is created and directed to be tried in an inferior Court, such

(t) Cf. *L. N. W. Rail. Co. v. Donellan*, (1898) 1 Q. B. 748, where it was held that a Provisional Order under the Railway and Canal Traffic Act, 1888 (51 & 52 Vict. c. 25), which created a special tribunal for deciding certain questions, did not oust the jurisdiction of the High Court to try an action with respect to a matter not specifically put within the arbitrator's jurisdiction. In an Ontario case, *Ahrens v. . . .* (1873), 23 U. C. C. P. 171, Gwynne, J., said that a statute relating to the practice and procedure of a Court presumes the existence of . . . and applies only to matters within the jurisdiction of the Court, and should not be called in aid to create jurisdiction where it is in question and cannot be shown to exist independently of the statute under consideration.

(u) The decision in this case was overruled in *Chadwick v. Ball* (1885), 14 Q. B. D. 855, but the observation quoted was adopted by Lindley, L.J., at p. 858, and was accepted as correct in *Payne v. Hogg*, (1900) 2 Q. B. 43, 53 (C. A.).

(x) Cf. *Jacobs v. Brett* (1875), L. R. 20 Eq. 1, 6, Jessel, M.R.

inferior Court tries the offence as a common law Court, subject to all the consequences of common law proceedings, one of which consequences is that it is liable to be removed in this Court, and this Court cannot be ousted of this jurisdiction without express negative words." It is, however, now well established that where statutory provisions are made for determining a particular class of difference by arbitration, the jurisdiction of the High Court as to such differences is ousted (y).

(6) To cut  
down effect  
of a written  
instrument.

12 & 13 Vict.  
c. 106.

(6) [In *Morris v. Mellin* (1827), 6 B. & C. 446, Lord Tenterden said: "It is a general rule, in the interpretation of Acts of Parliament, that an enactment the effect of which is to cut down, abridge, or restrain any written instrument shall have a limited construction;" and in the same case Bayley, J., said: "In order to avoid any written instrument by positive enactment, the words of that enactment ought to be so clear and express as to leave no doubt of the intention of the Legislature." Thus sect. 137 of the Bankruptcy Act, 1849 (rep.), enacted that "every judge's order made by consent given by a trader defendant in a personal action shall be filed," as therein required, "otherwise such order shall be null and void to all intents and purposes whatever." But it was held in *Bryan v. Child* (1850), 5 Ex. 368, that this enactment did not avoid such a judge's order as against the trader himself, but only as against his assignees if he afterwards became bankrupt], and similar rulings have been given under the Debtors Act, 1869 (32 & 33 Vict. c. 62), s. 27, which supersedes sect. 137 of 12 & 13 Vict. c. 106 (z), and under sect. 145 of the Bankruptcy Act, 1883 (46 & 47 Vict. c. 52) (a).

(y) *Norwich Corporation v. Norwich Tramways Co.*, (1906) 2 K. B. 119 (C. A.); cf. *Crosfield v. Manchester Ship Canal Co.*, (1905) A. C. 421.

(z) *Gowan v. Wright* (1886), 18 Q. B. D. 201.

(a) *Crawshaw v. Harrison*, (1894) 1 Q. B. 79; and see further on this point, Maxwell on Statutes (4th ed.), 318.

## CHAPTER IV.

WHAT SOURCES OF INFORMATION OUTSIDE A STATUTE MAY  
BE USED FOR THROWING LIGHT UPON ITS MEANING.

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1. [Upon the failure of what Dr. Lushington, in *Gough v. Jones* (1863), 9 Jur. N. S. 82, describes as "the most satisfactory mode of construction"—viz., examining the statute, and if possible ascertaining the meaning from the statute alone—it is necessary to consider whether it is in any case allowable to have recourse to anything beyond the four corners of the statute for the purpose of ascertaining what was the intention of the Legislature when they passed the particular Act of Parliament which

History of an Act. is under consideration. The rules laid down in *Heydon's case* (a) allow, to a certain extent, the circumstances which led to the passing of the Act to be considered (b).]

2 Edw. 7, c. 42. The most recent general statement of the rules to be observed in this respect is that of Farwell, L.J., in *R. v. West Riding County Council* (1906), 22 Times L. R. 783. The question there raised was whether, under the Education Act, 1902, any obligation devolved on the local education authority to pay for the cost of denominational religious instruction in certain schools. In the course of the argument both parties sought to refer to what had passed in Parliament to support their respective contentions as to the meaning of the enactments in question. Farwell, L.J., said: "It was suggested that the view taken by us of the Act is not in accordance with the intention of the House of Commons or with public understanding of the effect of the Act; and reference was attempted to be made to the debates and to passive resisters; but we have only to deal with the construction of the Act as printed and published: That is the final word of the Legislature as a whole, and the antecedent debates and subsequent statements of opinion or belief are not admissible. But they would be quite untrustworthy in any case. In the case of an Act dealing with a controversial subject ambiguous phrases are often used designedly, each side hoping to have thereby expressed its view, and the belief of each that it has succeeded is more often due to the wish than to any effort of reason. The generality of public understanding is quite incapable of proof, and is beside the mark unless as an appeal to timidity. *Securus judicat orbis terrarum*. The principles of construction applicable to Acts of Parliament are well settled, and will be found stated in *Stradling v. Morgan* (1560), 1 Plowd. 204 (c), which has received the approval of Lord Justice Turner in *Hawkins v. Gathercole* (1855), 6 De G. M. & G. 1, and of Lord Halsbury in the *Solio case*, (1898) A. C. 571, 575 (d), and

(a) (1584), 3 Co. Rep. 8. *Ante*, p. 95.

(b) [In *Mounsey v. Ismay* (1865), 34 L. J. Ex. 55, the Court of Exchequer said: "The occasion of the enactment of the Prescription Act, 1833 (3 & 4 Will. 4, c. 27) is well known. . . ." And in *R. v. Dean of Hereford* (1870), L. R. 5 Q. B. 196, 201, the Court said: "The meaning of the Act appearing to us open to doubt, it occurred to us . . . to ascertain the state of things existing at the time of the passing of the Act. . . ."] In *Lancashire Justices v. Mayor of Rochdale* . . . App. Cas. 494, 501, Lord Bramwell said: "I do not know historically how this Act came into existence, and I doubt very much whether, if one did know, one would have the right to apply that knowledge to the construction of the Act." In *Tasmania v. Commonwealth* (1904), 1 Australia C. L. R. 329, Barton, J., reviewed the history of the Commonwealth Constitution as an aid to ascertaining the meaning of certain expressions therein.

(c) The passage in *Stradling v. Morgan* is set out *post*, p. 170.

(d) In that case Lord Halsbury, L.C., accepts *Heydon's case* (*ubi sup.*), and thus sums up the prior authorities: "Turner, L.J., in *Hawkins v. Gathercole* (1855), 6 D. M. & G. 1, 21, and adding his own high authority to that of the judges in *Stradling v. Morgan* (*ubi sup.*), after enforcing the proposition that the intention of the Legislature must be regarded, quotes at length the judgment in that case, that the judges have . . . the intention 'sometimes by con-



do not admit of any such considerations. The Court must, of course, in construing an Act of Parliament, as in construing a deed or will, do its best to put itself in the position of the authors of the words to be interpreted at the time when such words were written or otherwise became effectual; but this will no more justify us in admitting as evidence on the construction of an Act speeches in either House or subsequent statements in the public papers, or elsewhere, of the effect of the Act than it would justify us in admitting on the construction of a will the advice given to the testator by his solicitor before or the statements of himself or his expectant legatees of the effect of his will after he had made it. The mischief sought to be cured by the Act and the aim and object of the Act must be sought in the Act itself. Although it may, perhaps, be legitimate to call history in aid to show what facts existed to bring about a statute, the inferences to be drawn therefrom are extremely slight, as is pointed out by Baron Bramwell in *Att.-Gen. v. Sillem* (1864), 2 H. & C. 431, 531. I think that the true rule is expressed with accuracy by Lord Langdale in giving the judgment of the Privy Council in the *Gorham case* (1852), Moore, 462: 'We must endeavour to ascertain for ourselves the true meaning of the language employed'—in the Articles and Liturgy—'assisted only by the consideration of such external or historical facts as we may find necessary to enable us to understand the subject-matter to which the instruments relate and the meaning of the words employed' " (e).

"Lord Blackburn, in *Wear River Commissioners v. Adamson* (1877), 2 App. Cas. 743, 763, says: 'In all cases the object is to see what is the intention expressed by the words used. But from the imperfection of language it is impossible to know what that intention is without inquiring further, and seeing what the circumstances were with reference to which the words were used, and what was the object appearing from these circumstances which the persons using them had in view.' On this principle the Court is not to be oblivious of the history of law and legislation, although it is not at liberty to construe an Act of Parliament by the motives which influenced the Legislature" (f).

sidering the cause and necessity of making the Act . . . sometimes by foreign circumstances (thereby meaning extraneous circumstances); so that they have ever been regulated by the intent of the Legislature, which they have always taken . . . into the necessity of the matter, and according to that which is consonant to reason and good discretion,' and he adds, 'We have therefore to consider not merely the words of the Act of Parliament, but the intent of the Legislature, to be collected from the cause and necessity of the Act being made, from a comparison of its several parts, and from foreign, meaning extraneous circumstances, so far as they can justly be considered to throw light on the subject.' "

(e) In *Re Gorham* (1850), 5 Ex. 630, 667, Alderson, B., had said: "We do not construe Acts of Parliament by reference to history." Subsequent expressions in his judgment indicate that he meant "Parliamentary history."

(f) See *Holme v. Guy* (1877), 5 Ch. D. 901, Jessel, M.R.

In accordance with these and other decisions, it is usual, in determining the construction of a statute, to find facts referred to "which are stated to exist outside the Act of Parliament" under consideration (g).

Public  
history.

On the strength of these authorities it is permissible, if the meaning of a statute is not clear, to pray in aid the *public* history of the time when it was passed. And this view is supported by very high authority in the United States.

In *U. S. v. Union Pacific Rail. Co.* (1875), 91 U. S. 72, 79, Davis, J., said: "In construing an Act of Congress we are not at liberty to recur to the views of individual members in debate, nor to consider the motives which influenced them to vote for or against its passage. The Act itself speaks the will of Congress, and this is to be ascertained from the language used. But Courts in construing a statute may, with propriety, recur to the history of the time when it was passed (h); and this is frequently necessary in order to ascertain the reason as well as the meaning of particular provisions in it" (i). The statute there in question was one passed under exceptional circumstances in 1862 during the Civil War, when a trans-continental railway was regarded as a national necessity for facilitating access to the Pacific coast and its defence in the event of war with Great Britain.

As was said by Willes, J., in *Millar v. Taylor* (1769), 4 Burr. 2303, 2332: "The sense and meaning of an Act of Parliament must be collected from what it says when passed into law, and not from the history of changes it underwent in the House where it took its rise. That history is not known to the other House or to the Sovereign" (k).

Debates in  
Parliament.

[It is not permissible, in discussing the meaning of an obscure enactment, to refer to "the parliamentary history" of a statute, that is to say, to the debates which took place in Parliament (l)]

(g) [In *Gren v. R.* (1876), 1 App. Cas. 513, at p. 531, Lord Cairns said: "The doubt which has arisen [as to the meaning of the Act] has arisen from the facts which are stated to exist outside the Act of Parliament, and which I will now refer to. . . ."]

(h) This statement is based on *Aldridge v. Williams* (1845), 3 How. (U. S.) 1, 24, Taney, C.J., which deals with an Act known as the Compromise Act, passed to settle controversies as to the Federal Customs tariff. Cf. also *Re Trans-Missouri Freight Association* (*infra*, p. 123, n.).

(i) This statement is based on *Preston v. Browder* (1816), 1 Wheaton (U. S.), 115, 121, Todd, J., where the Court had to deal with statutes of North Carolina of 1777 and 1778, passed just after the Declaration of Independence and the conclusion of a treaty with the Cherokee nation.

(k) This case turned on the effect of the Copyright Act, 8 Anne, c. 21 (c. 19, Ruffhead).

(l) In *R. v. Bishop of Oxford* (1879), 4 Q. B. D. 525, Bramwell and Bagdollay, L.JJ., allowed a speech of the Lord Chancellor in the House of Lords to be cited as an authority as to the construction of a statute. And in *S. E. Rail. Co. v. Railway Commissioners* (1880), 5 Q. B. D. 217, 236, Cockburn, C.J., said: "Where the meaning of an Act is doubtful, we are, I think, at liberty to recur to the circumstances under which it passed into law as a means of solving the difficulty"; and he accordingly proceeded to quote a speech made by Mr. Card-

when the statute was under consideration ; and the alterations (m) made in it during its passage through Committee, are, as the Court said in *R. v. Hertford College* (1878), 3 Q. B. D. 693, 707, "wisely inadmissible to explain it." In *Herron v. Rathmines, &c. Commissioners*, (1892) App. Cas. 498, 502, Lord Halsbury, L.C., said, with reference to the construction of a local Act: "I very heartily concur in the language of FitzGibbon, L.J., that 'we cannot interpret the Act by any reference to the Bill, nor can we determine its construction by any reference to its original form.'"

In *Administrator-General of Bengal v. Prem Lal Mullick* (1895), L. R. 22 Ind. App. 107, the Judicial Committee, per Lord Watson (p. 118), said: "Their lordships observe that the two learned judges who constituted the majority in the Appellate Court (Supreme Court of Calcutta), although they do not base their judgment on them, refer to the proceedings of the Legislature which resulted in the passing of the Act (No. ii.) of 1874 as legitimate aid in the construction of sect. 31. Their lordships think it right to express their dissent from that proposition. The same reasons which exclude these considerations when the clauses of an Act of the British Legislature are under construction are equally cogent in the case of an Indian statute."

The same rule is adopted in the United States (n), and in Australia it has been ruled that the debates in the Federal Convention which framed the Commonwealth Constitution afterwards brought into force by Imperial legislation cannot be used for the interpretation of the Constitution, and it was said that the reference in the United States to the Federalist

well on the introduction of the Bill into the House of Commons, and a speech made by the Lord Chancellor on introducing it into the House of Lords. These decisions are inconsistent with the dicta of Lord O'Hagan (*infra*), and the first was disapproved by Earls Cairns and Selborne in *Julius v. Bishop of Oxford* (1880), 5 App. Cas. 214. See also, as to the doubtful propriety of referring for the construction of a statute relating to a colony, to the speech of a Secretary of State in introducing it in Parliament, *Smiles v. Belford* (1877), 1 U. C. App. 436, 445, Burton, J.A. ; 451, Moss, J.A. ; *Gosselin v. R.* (1903), 33 Canada S. C. R. 255, 264, Davies, J.

(m) In *Att.-Gen. v. Sillem* (1863), 2 H. & C. 521, Pollock, C.B., said: "No Court can construe any statute, and least of all a criminal statute, by what counsel are pleased to suggest were alterations made in Committee by a member of Parliament, who was 'no friend to the Bill,' even though the Journals of the House should give some sanction to the proposition. That is not one of the modes of discovering the meaning of an Act of Parliament recommended by Plowden or sanctioned by Lord Coke or Blackstone." Cf. *Holme v. Guy* (1877), 5 Ch. D. 901, 905, Jessel, M.R.

(n) In *Re Trans-Missouri Freight Association* (1896), 166 U. S. 290, 316, Peckham, J., said: "There is a general acquiescence in the doctrine that debates in Congress are not appropriate sources of information from which to discover the meaning of the language of a statute passed by that body. The reason is that it is impossible to determine with certainty what construction was put upon an Act by the members of a legislative body that passed it by resorting to the speeches of individual members thereof. Those who did not speak may not have agreed with those who did, and those who spoke might differ from each other: the result being that the only proper way to construe a legislative Act is

must be considered as reference to a text-book or an expert opinion (o).

Reports of  
Commissioners.

51 & 52 Vict.  
c. 50.

46 & 47 Vict.  
c. 57.

Memorandum  
prefixed to  
Bills.

It is now generally agreed that reference may be made to reports on the effect and defects of previous statutes *in pari materia*. In the *Solio case*, (1898) App. Cas. 571, 576, Lord Halsbury said: "... To construe the statute in question (the Patents Act, 1888) it is not only legitimate, but highly convenient, to refer both to the former Act and to the ascertained evils to which the former Act had given rise, and to the later Act which provided the remedy"; and accordingly he and the other Law Lords held that reference could be made to the report of a commission appointed in 1887 to inquire into the duties, arrangements, &c. of the Patent Office under the Patents, &c. Act, 1883. Prior to this case there had been an indisposition on the part of the judges, with some exceptions, to permit reference to such reports, which were considered "scarcely legitimate guides to the construction of the statute which is the outcome of" a report (p).

The memorandum or breviat now usually prefixed to Bills of considerable importance, and especially to consolidation Bills, often supplies useful hints as to the intention of the draftsman, but has not yet been adopted as an aid to the judges in construing the Act when passed.

[There are, however, several (q) sources of information outside the statute itself to which it is allowable to have recourse in

from the language used in the Act, and upon occasion by resort to the history of the time when it was passed."

(o) *Sydney Municipal Council v. Commonwealth* (1904), 1 Australia C. L. R. 208, 213. In *Gosselin v. R.* (1903), 33 Canada S. C. 255, 264, the relevance of debates as a guide to interpretation is fully discussed by Taschereau, J., and the authorities are collected.

(p) *Rankin v. Lamont* (1880), 5 App. Cas. 52, Lord O'Hagan. Except *Fellows v. Clay* (1843), 4 Q. B. 313, at p. 356, in which Lord Denman referred to the Report of the Real Property Commissioners, none of the earlier cases countenance reference to such Reports. [In *Salkeld v. Johnson* (1848), 2 C. B. 749, and *Farley v. Bonham* (1861), 30 L. J. Ch. 239, reference was not allowed to Reports of the Real Property Commissioners. In *Martin v. Hemming* (1854), 18 Jur. 1002, and *Att. Gen. v. Turner* (1856), 2 Jur. N. S. 763, the Report of the Common Law Commissioners was rejected; and in *Ewart v. Williams* (1854), 3 Drew. 21, that of the Chancery Commissioners was also rejected.] In *R. v. Bishop of Oxford* (1879), 4 Q. B. D. 525, the Court considered that the Church Discipline Act (3 & 4 Vict. c. 86) might be "looked at by the light of the Report of the Ecclesiastical Courts Commissioners which preceded it." In *Curran v. Treleven*, (1891) 2 Q. B. 545, 557, the Report of a Royal Commission was referred to as elucidating the intentions of the Legislature with reference to the law of conspiracy; and see *R. v. Bishop of London* (1890), 24 Q. B. D. 213. In *Symes v. Currelly* (1880), 5 App. Cas. 138, 158, the Judicial Committee conceded that the reports of the Commissioners for preparing the Civil Code of Quebec were of authority, but not of judicial authority; and *vide supra*, pp. 122, 123.

(q) "We have been referred," said Brett, L.J., in *Ex parte Chick* (1879), 11 Ch. D. 731, 738, "to a passage in Cicero which is to give the rule for construing an English statute. To my mind, to quote Cicero for such a purpose is too ambitious." It would be idle to refer to classical Latin or Parisian French in the interpretation of the earlier English statutes.

order to throw light upon the meaning of an obscure enactment. These sources are—(1) other statutes; (2) expositions of text-writers; (3) usage] including judicial decisions and the practice of conveyancers.

2. [In considering what light one statute may throw upon the meaning of another statute, we will first consider the assistance to be derived from statutes which are *in pari materia* with the statute under consideration; and secondly, from earlier statutes, not precisely *in pari materia*, but in some way relating to or affecting the same subject-matter, bearing in mind “that,” as the Judicial Committee said in *Escott v. Mastin* (1842), 4 Moore, P. C. 104, 123, “the same enactment of a statute (or the same direction in a rubric) may receive one construction when it deals for the first time with a given subject-matter, and have another meaning and construction when it deals with a matter which has already been made the subject of enactment, and that this is most specially the case where the posterior enactment deals with the matter without making any reference to the prior enactment.” Thirdly, we will consider what assistance may be derived from subsequent statutes as being what is called “parliamentary expositions” of prior statutes.]

Light thrown upon meaning of statute by other statutes.

In the interpretation of statutes the Courts decline to consider any other statutes proceeding on different lines and including different provisions, or the judicial decisions thereon (*r*). Thus in *Re Lord Gerard's Settled Estates*, (1893) 3 Ch. 252, the Court of Appeal held that the Settled Land Acts formed a code applicable to the subject-matter with which they dealt, and that a decision on the Lands Clauses Act, 1845, was not applicable for their interpretation, because that Act was passed *alio intuitu*, and dealt with a different subject-matter. Lord Macnaghten, when discussing the phraseology of two Revenue Acts, said, in *Inland Revenue Commissioners v. Forrest* (1890), 15 App. Cas. 334, 353: “The two Acts differ widely in their scope; and even when they happen to deal with the same subject their wording is not the same. It was argued, indeed, that the language was ‘practically identical’; but that expression, to my mind, involves an admission that the language is different.”

8 & 9 Vict. c. 18.

In *Grand Trunk Rail. Co. v. Washington*, (1899) App. Cas. 275, which turned on the meaning of an Act of the Dominion of Canada (51 Vict. c. 29), Sir Henry Strong said (at p. 280): “The decision of the Court of Appeal (of Ontario) seems to have been influenced by contrasting the Act of Parliament with certain statutes enacted by the Legislature of Ontario for the regulation of provincial railways. As these are enactments emanating from a different legislative body from that which

(*r*) *Knowles v. L. & Y. Rail. Co.* (1889), 14 App. Cas. 248, 253, Lord Halsbury. He had been asked to consider the Railways Clauses Act, 1845, as an aid to construing 31 Geo. 3, c. lxviii.

passed the statute to be interpreted, and cannot be said to be *in pari materiâ* with that, their lordships are unable to see that they ought to have any influence upon the questions to be decided arising exclusively upon the Dominion Act, and relating only to Dominion railways." In the United States the Supreme Court has declined, in construing a statute of one state couched in wide terms, to read into it limitations found in similar statutes of other states (s); and in Canada, United States statutes as to grants of swamp lands have been held to be no guide in construing a Canadian statute on the same subject (t).

In the following cases it may be profitable to refer to one Act for the construction of another:—

- (1) When the statutes are *in pari materiâ*—i.e., deal with the same subject-matter, or, in other words, constitute a part or the whole of the code of legislation on a particular subject (u);
- (2) When the later Act specifically directs that it is to be read and construed as one with the prior Act;
- (3) When the later Act is a consolidation Act re-enacting the provisions of earlier Acts without substantial alteration;
- (4) When the clause to be construed is a common form clause re-enacted from time to time in different statutes as occasion arises, such as clauses as to notice of action, perjury, administration of oaths, and the like; and
- (5) When the term or phrase to be construed occurs in another Act and has been already construed in a particular way, and nothing in the context prevents the use of the definition already attached by the legal dictionary to the term or phrase in question.

Statutes *in  
pari materiâ*.  
Rule that  
statutes *in  
pari materiâ*  
should be read  
together.

[Where Acts of Parliament are *in pari materiâ*, the rule as laid down by the twelve judges in *Palmer's case* (1784), 1 Leach, C. C. (4th ed.) 355, is that such Acts "are to be taken together as forming one system, and as interpreting and enforcing each other" (x). And as Knight Bruce, L.J., said in *Ex parte Copeland* (1853), 22 L. J. Bank. 21, upon a question of construction arising "upon a subsequent statute on the same branch of the law, it is perfectly legitimate to use the former Act, though repealed." "For this," continued he, "I have the

(s) *Holder v. Stratton* (1904), 198 U. S. 198, 202, White, J.

(t) *A.-G. of Manitoba v. A.-G. of Canada* (1904), 34 Canada S. C. 282, 314, Davies, J.

(u) *R. v. Tonbridge Overseers* (1883), 11 Q. B. D. 134; 13 *ib.* 339.

(x) Ilbert, *Legislative Methods and Forms*, 250, speaks of "the rule that an Act may be interpreted by reference to other Acts dealing with the same or a similar subject-matter. Hence the language of these Acts must be studied. The meaning attached to a particular expression in an Act, either by definition or by judicial decision, may be attached to it in another, and variation of language may be construed as indicating change of intention." See, for instance, *City of Ottawa v. Hunter* (1900), 31 Canada S. C. 7, 10, Taschereau, J.

authority of Lord Mansfield, who in *R. v. Lordale* (1758), 1 Burr. 445, 447, thus lays down the rule, 'Where there are different statutes *in pari materiâ*, though made at different times, or even expired and not referring to each other, they shall be taken and construed together as one system and as explanatory of each other.' If it had been necessary, I should myself have acted on this rule in the present case" (y).] In conformity with this rule, in construing a consolidation Act, prior statutes repealed, but reproduced in substance, are regarded as *in pari materiâ*, and judicial decisions on the repealed statute are treated as applicable to substantially identical provisions of the repealing Act, in the same manner as references to a repealed Act are, by sect. 38 of the Interpretation Act, 1889, read as applicable to any section in which its terms are reproduced. This view was taken in *Mitchell v. Simpson* (1890), 25 Q. B. D. 183, and has also been adopted by the House of Lords in *Smith v. Baker*, (1891) App. Cas. 325 (s), where Lord Watson, at p. 349, referred for the construction of sect. 120 of the County Courts Act, 1888, relating to appeals, to the decision in *Clarkson v. Musgrave* (1881), 9 Q. B. D. 386, upon the terms of the repealed County Courts Act, 1875, and held that decision to be equally applicable to the Act of 1888. But the same very learned judge, in *Bradlaugh v. Clarke* (1883), 8 App. Cas. 354, 380, said that it appeared to him "to be an extremely hazardous proceeding to refer to provisions which have been absolutely repealed in order to ascertain what the Legislature intended to enact in their room and stead"; and the application of the rule, while it may be safe as to consolidation Acts, is difficult in cases where the new Act considerably alters the law as declared by the repealed Act (a).

52 & 53 Vict.  
c. 63.

51 & 52 Vict.  
c. 43.

The rule as to statutes *in pari materiâ* applies even without any statutory provision. But it is now common to insert clauses which make certain Acts one for purposes of construction, e.g. the Land Act (Ireland), 1889 (52 & 53 Vict. c. 66), s. 11, which runs thus: "All other words and expressions in this Act which are not thereby defined or explained, and are defined or explained in any of the Tramways (Ireland) Acts, have, unless there is something inconsistent in the context, the same meaning as in the last-mentioned Acts; and the said Acts, as varied by this Act, and this Act shall, so far as is consistent with the

Effect of  
enacting that  
Act shall be  
construed as  
one with  
another Act.

(y) In an Australian case, *Perth Local Board v. Maley* (1904), 1 Australia C. L. R. 702, 715, Griffith, C.J., said: "It is usual to credit the Legislature with a knowledge of the existing law on the subject dealt with; and when we find that such a meaning has been constantly attributed to the word 'necessary' in other Acts dealing with similar matters, they may have reasonably expected that the word would in this Act be construed as having the same meaning. Against that construction no authorities have been cited."

(z) See also *Hodgson v. Bell* (1890), 24 Q. B. D. 525, on sect. 65 of the Act, following *Foster v. Usherwood* (1877), 3 Ex. D. 1, on the prior County Courts Act of 1867.

(a) As to its application even in such a case, see *Titterton v. Cooper* (1882), 9 Q. B. D. 473, 487, Brett, L.J.

tenor thereof, be read together and construed as one Act" (b). [In *Waterlow v. Dobson* (1857), 27 L. J. Q. B. 55, Lord Campbell said, with regard to a similar clause: "That clause is frequently inserted in modern Acts of Parliament, but if the two Acts be *in pari materiâ*, the construction would be the same without it," and the insertion of such a clause does not necessarily extend all the provisions of an earlier Act to those of the later Act.]

[In *Mather v. Brown* (1876), 1 C. P. D. 596, the question arose how far the provisions of the old Municipal Corporations Act (5 & 6 Will. 4, c. 76) were incorporated in the Municipal Elections Act, 1875 (rep.), by virtue of sect. 13 of the latter Act, which says: "This Act, so far as consistent with the tenor thereof, shall be construed as one with the [former] Act and the Acts amending it." Section 142 of the earlier Act contained provisions for amending inaccuracies, and it was vainly contended that this section applied to inaccuracies in nomination papers under the later Act. Lord Coleridge said, at p. 601: "These terms [those of sect. 142] do not seem to me to extend the operation of the amending section in the earlier Act to a document which had no existence then, and therefore could not have been in the contemplation of the Legislature." And Lindley, J., added (p. 602): "I have examined the authorities to see if they would supply any reasoning by which we might get over this objection. But I have found nothing to support the petitioner's view. On the contrary, I have found two cases which look the other way, showing that a mere incorporation by reference of a former Act does not extend all the provisions of the earlier to the later Act. These are *Lane v. Bennet* (c) and *Davison v. Farmer*" (d). But in *Norris v. Barnes* (1872), L. R. 7 Q. B. 537, the Court held, in construing the Nuisances Removal Act of 1855 and the Sanitary Act of 1866, which were to be construed as one, that sect. 44 of the earlier Act must apply to nuisances under the later Act (e).

Statutory rules, so far as valid, are regarded as *in pari materiâ* with the statutes under or in respect of which they are made. Thus it was held in *Re Foster* (1881), 8 Q. B. D. 515, 522, per Brett, L.J., that sect. 28 of the Regulation of Railways Act, 1873, should be construed in the same manner as Ord. LV. of the R. S. C. 1875, on the ground that it was substantially identical in terms, and was *in pari materiâ* as giving jurisdiction to a judicial tribunal with reference to costs.

[Another rule with regard to the construction of statutes *in pari materiâ* is that any judicial decision as to the meaning of

(b) Cf. the Land Transfer Act, 1897, which is to be construed as one with the Land Transfer Act, 1875, and the Larceny Acts, 1896 and 1901, which are to be read as part of the Larceny Act, 1861.

(c) (1836), 1 M. & W. 70.

(d) (1851), 6 Ex. 242.

(e) Cf. *Blades v. Lawrence* (1874), L. R. 9 Q. B. 374.



one is, as Buller, J., said in *R. v. Mason* (1788), 2 T. R. 586, "a sound rule of construction for the other" (*f*). In that case the question was whether an indictment under 30 Geo. 2, c. 24, for obtaining money by false pretences was good if it did not show what the false pretences were. It appeared that it had been held in *R. v. Munoz* (1739), 2 Str. 1127, that an indictment for procuring a promissory note by false tokens, under 33 Hen. 8, c. 1, was bad because it did not specify what the false tokens were. "30 Geo. 2, c. 24," said Buller, J., "only enlarges the description of the offence in the statute of Henry VIII. Both statutes are made *in pari materiâ*, and whatever has been determined in the construction of one of them is a sound rule of construction for the other. The judgment was arrested in the case in *Strange* because the indictment did not specify the false tokens; therefore, by the same reason, an indictment on 30 Geo. 2, c. 24, which speaks of false pretences, must state what the false pretences are, otherwise the indictment is bad."

ever is decided as to one holds good as to the other.

This rule also holds good with regard to a colonial Act *in pari materiâ* with an English Act. In *Catterall v. Sweetman* (1845), 9 Jur. 954, Dr. Lushington said: "I must construe the Act of New South Wales . . . as an Act *in pari materiâ*. . . . And I conceive (though I know of no direct authority for the position) that an Act of a colonial legislature where the English law prevails must be governed by the same rules of construction as prevail in England, and that English authorities upon an Act *in pari materiâ* are authorities for the interpretation of the colonial Act. I think it is true as a general principle" (*g*).] This decision was approved by the Judicial Committee in *Trimble v. Hill* (1880), 5 App. Cas. 342 (*h*). It is safer to apply the rule only where the colonial statute is a re-enactment or adaptation of Home legislation or obviously framed with regard to it, as in the case of statutes relating to Bills of Exchange, Partnership, or Sale of Goods, and even in such cases any difference in wording must be carefully taken into consideration.

This rule applies to colonial Acts.

[Some difficulty arises in deciding what statutes are *in pari materiâ* (*i*).] Roughly speaking, all those indexed under the same head in the General Index to the Statutes may be regarded as *in pari materiâ*, but the index in question has no authority except such as is derived from the care and method bestowed on its preparation. Incorporation by reference or by a direction that Acts are to be read as one is *primâ facie* evidence that

(*f*) Subject to the caution given *ante*, p. 125.

(*g*) See *post*, Part II. ch. ix.

(*h*) But see *Grand Trunk Rail. Co. v. Washington*, (1899) A. C. 275.

(*i*) [In a Scotch case, *Strachan v. Thompson* (1850), 13 Dunlop, 279, it was held that the rule as to statutes *in pari materiâ* does not apply to private or local Acts.] *Sed quare*.

59 & 60 Vict.  
c. 14.

Parliament regarded them as *in pari materiâ* (j). And so also it would seem is the fact that a collective title is given to a series of Acts by the Short Titles Act, 1896, or any other enactment (k). But it cannot be said that there is any clear judicial definition by which to settle whether statutes are *in pari materiâ*, though there are many dicta.

[In *Crossley v. Arkwright* (1788), 2 T. R. 609, Buller, J., said that all Acts relating to such a subject as stamps must be construed *in pari materiâ*. In *R. v. Lordale* (1758), 1 Burr. 447, Lord Mansfield said that the laws concerning Church leases, and those concerning bankrupts, also all the statutes providing for the poor, are to be considered as one system. See also *Doe d. Tennyson v. Lord Yarborough* (1822), 1 Bing. 24; *Bayly v. Murin* (1675), 1 Vent. 246 (l). In *Davis v. Edmondson* (1803), 3 B. & P. 382, it was held that all statutes making provisions as to the certificate to be taken out by solicitors were *in pari materiâ*. In *Redpath v. Allan* (1872), L. R. 4 P. C. 518, it was held that certain Canadian statutes relating to pilotage were *in pari materiâ*. But in *Moore's case* (1704), 2 Ld. Raym. 1028, it was held that a statute which prohibited the execution of a warrant on a Sunday was not *in pari materiâ* with a subsequent statute which regulated the arrest of escaped prisoners. In *Howden v. Rocheid* (1869), L. R. 1 H. L. (Sc.) 550, 562, it was observed by Lord Colonsay that the mere fact that ancient statutes are contemporaneous will not entitle them to be used as explanatory of one another. In the American case of *United Society v. Eagle Bank* (1829), 7 Conn. 457, 470, Hosmer, J., said: "Statutes are *in pari materiâ* which relate to the same person or thing, or to the same class of persons or things. The word *par* must not be confounded with the word *similis*. It is used in opposition to it, as in the expression *magis pares sunt quam similes*, intimating not likeness merely, but identity. It is a phrase applicable to the public statutes or general laws made at different times and in reference to the same subject" (m).]

Application  
of rule.

[If a large number of statutes are *in pari materiâ*, considerable difficulty has been felt in deciding how to apply to them the canons under consideration. Thus in *R. v. Surrey* (1788), 2 T. R. 504, the question was whether an appeal lay from the decision of two justices for an offence against the excise laws. The conviction had been on 25 Geo. 3, c. 72, which enacted in sect. 33 that all and every the powers, authorities, directions, rules, methods, penalties, &c., which by 12 Car. 2, c. 24, "or by any other law now in force relating to the excise," are provided for securing, &c. the duties or penalties thereby granted, should

(j) *Vide infra*, Consolidation and Revision, Part II. ch. v.

(k) For a list of most of such groups, see App. B.

(l) [*Cf. Duck v. Addington* (1791), 4 T. R. 447, as to hackney-carriage Acts.]

(m) [See also Sedgwick, Statutory Law (2nd ed.), 210.]

be exercised as fully and effectually as if all and every the said powers were particularly repeated and again enacted in this present Act, and in sect. 34, that all fines, &c. respecting the inland duties imposed by this Act shall be sued for by such ways as any fines may be sued for by *any law of excise*. It was argued that these general clauses of reference adopted all former laws of excise, and therefore, inasmuch as some of the former laws gave the power of appeal, they were virtually included in this. This argument, however, did not prevail, and Ashhurst, J., in delivering judgment, explained as follows the effect of this general reference to all former statutes contained in sects. 33 & 34 of 25 Geo. 3, c. 72: "The fair construction to be put upon this Act seems to be this: that all the *general* powers and provisions given and made in Acts *in pari materiâ* shall be virtually incorporated into this, but that such provisions as are always considered as *special* provisions shall not (*n*). The power of appealing from the judgment of justices seems to be of this kind, and does not, therefore, attach without being expressly given." Prosecutions for offences against 2 & 3 Vict. c. 12, could by sect. 4 be commenced only by the Attorney-General, and sect. 6 enacted that that Act should be construed as one Act with 39 Geo. 3, c. 79. In *R. v. Johnson* (1845), 8 Q. B. 102, the question arose whether, in consequence of the enactment contained in sect. 6, a conviction under 39 Geo. 3, c. 79, was bad if the prosecution had not been instituted by the Attorney-General. The Court held that it was not bad, and with regard to the enactment of sect. 6, Lord Denman said as follows: "I do not well know what was intended by the enactment that 39 Geo. 3, c. 79, should be construed as one Act with 2 & 3 Vict. c. 12. This, however, is an offence against 39 Geo. 3, c. 79. . . . If the 2 & 3 Vict. c. 12, had not created any fresh offence, there might have been some ground for the argument now urged."]

[But statutes which are *in pari materiâ* cannot, in the absence of specific provision to that effect, be treated precisely in the same way as if they were merely parts of one Act; a provision not found in an earlier Act cannot, in the absence of indication of clear intention, be imparted into an earlier Act *in pari materiâ* (*o*). In *Casanova v. R.* (1866), L. R. 1 P. C. 268, it appeared that a foreign ship having been seized in a British harbour on suspicion of being engaged in the slave trade, and subsequently set at liberty again, and the suspicion having

(*n*) In *R. v. Excise Commissioners* (1788), 2 T. R. 387, Buller, J., said: "As far as statutes are *in pari materiâ*, they may be taken into consideration together as to the *general* provisions of the Act."

(*o*) Cf. *R. v. Johnson*, *supra*. In *Blake v. Attersoll* (1824), 2 B. & C. 882, Littledale, J., said: "Both Acts are *in pari materiâ* . . . therefore . . . the preamble of the first Act may be considered as virtually incorporated in the second Act." But it is very doubtful whether this rule can often safely be applied.

5 Geo. 4,  
c. 113.

turned out to be groundless, application was made to the Admiralty Court of Sierra Leone to decree that the damages should be paid to the foreign ship for its wrongful seizure, by virtue of sect. 35 of the Slave Trade Act, 1824, which enacted that "the prosecutors in such a case should pay such sums in the nature of costs and damages as the Court might decree when it appeared to such Court that the seizure was not justified *by the circumstances of the case*." The question therefore arose whether the seizure was justified or not. Now, it was proved that the suspicion had arisen from the fact that the ship had on board a very large number of empty water-casks. By a subsequent statute (5 & 6 Will. 4, c. 60)—applying to the seizure of foreign vessels, not in British harbours (as this was), but on the high seas—it was enacted that the mere fact of an unreasonable number of water-casks being found upon a ship shall of itself be sufficient evidence to justify its seizure. The judge of the Admiralty Court at Sierra Leone therefore decided that the seizure of this vessel was justified by this fact alone, and referred to this subsequent statute as enabling him to come to this conclusion, and he did not, as he ought to have done in accordance with 5 Geo. 4, c. 113, take into consideration any other "circumstances of the case." The Judicial Committee reversed his judgment. "The learned judge," said they (at p. 277), "refers to that statute (5 & 6 Will. 4, c. 60) as enabling him to arrive at the conclusion that the existence on board this ship . . . of an unusual quantity of water-casks is a circumstance of such grave suspicion as to justify the seizure. The learned judge was not at liberty to use the rule of evidence introduced by that subsequent statute as applicable to the case before him. It was perfectly competent to him to refer to that statute as an Act that recognised the fact of having an unusual number of water-casks on board as a circumstance of suspicion, but the learned judge was not at liberty to take that circumstance *per se*, as a judge applying the Act of 5 & 6 Will. 4, c. 60, might have done. He was bound to take it in conjunction with all the other circumstances of the case."]

Comparison  
with earlier  
statutes in  
*pari materia*.

[Assistance in ascertaining the meaning of an enactment may also be obtained by comparing its language with that used in earlier statutes relating to the same subject.] But, as said by Lord Russell, C.J., in *R. v. Titterton* (1895), 2 Q. B. 61, 67, "it is proper to refer to earlier Acts *in pari materia* only when there is ambiguity." ["It has been a general rule," said Blackburn, J., in *Hadley v. Perks* (1866), L. R. 1 Q. B. 444, 457, "for drawing legal documents from the earliest times, which one is taught when one first becomes a pupil to a conveyancer, never to change the form of words unless you are going to change the meaning, and it would be as well if those who are engaged in the preparation of Acts of Parliament would bear in mind that that is the real principle of construction."]

But in *Lawless v. Sullivan* (1881), 6 App. Cas. 373, the Judicial Committee said that, although "the employment of different language in the same Act may in some cases help to show that the Legislature had in view different objects, a change in language cannot be relied on as furnishing a *general rule of construction*, and the weight to be given to such changes must depend on a view of the entire enactments in which they occur." Acting on this principle, in *Alison v. Burns* (1889), 15 App. Cas. 44, 51, they examined not only the sections of the Colonial Land Act, but also the previous legislation of the colony on the subject, in order to ascertain the policy and intention of the Legislature. If a statute, upon which a particular construction has been long put, is re-enacted *ipsissimis verbis*, "this construction," as the Court said in *Mansell v. R.* (1857), 8 E. & B. 73, "must be considered to have the sanction of the Legislature" (*p*). Likewise, if Acts are framed using the forms of words or clauses in prior Acts which have received judicial construction, unless a contrary intention appears, the Courts will presume that the Legislature has adopted the judicial interpretation, or has used the words in the sense attributed to them by the Courts (*Ex parte Campbell* (1870), 5 Ch. App. 703, James, L.J., and *Barlow v. Teal* (1884), 15 Q. B. D. 403, Coleridge, L.C.J.). And, conversely, [if we find that the particular language employed by the Legislature in the earlier statutes on a particular subject has been departed from in a subsequent statute relating to the same subject, it is generally (*q*) a fair presumption that the alteration in the language used in the subsequent statute was intentional (*r*). "Where two statutes," said Brett, J., in *Dickenson v. Fletcher* (1873), L. R. 9 C. P. 1, 8, "dealing with the same subject-matter use different language, it is an acknowledged rule of construction that one may be looked at as a guide to the construction of the other." But in *Wray v. Ellis* (1859), 1 E. & E. 276, 288, Lord Campbell, C.J., said: "There can be little use in referring to cases where a similar question has arisen on Acts differently framed, for they only illustrate the general principle, which is not in dispute" (*s*). When an Act, though mainly a consolidation Act, is not wholly so, but

Presumption from different language employed in subsequent statute.

(*p*) In *Nicholls v. Cumming* (1877), 1 Canada S. C. 395, 425, Strong, J., said: "It is a cardinal rule in the construction of statutes that when a particular enactment has received a judicial interpretation, and the Legislature has afterwards re-enacted it, or one *in pari materia* with it, in the same terms, it must be considered to have adopted the construction which the Courts have applied."

(*q*) For the exceptions, see *post*, p. 134.

(*r*) In *City of Ottawa v. Hunter* (1900), 31 Canada S. C. 7, 10, Taschereau, J., stated the rule thus: "When we see in Acts *in pari materia* by the very same Legislature words added to those used in a prior enactment, it would be setting at naught the clear intention of the Legislature to give the later enactment the construction judicially placed on the earlier enactment. To do so would be to read out of the statute expressions which must be held to have been deliberately inserted to make the new Act differ from the old."

(*s*) *Dictum* approved in *R. v. Titterton*, (1895) 2 Q. B. 61, 67, by Russell, L.C.J.

24 & 25 Vict.  
c. 100.

introduces fresh words, the judicial decisions upon the construction of the consolidating Act are no longer an authority, and cannot affect the interpretation of the new Act. This doctrine was laid down with reference to one of the Criminal Law Consolidation Acts of 1861 (*t*), in *Reed v. Nutt* (1890), 24 Q. B. D. 669. [In *R. v. Jennings* (1838), -2 Lewin, C. C. 130, it being an indictable offence under 7 Will. 4 & 1 Vict. c. 85, s. 4, to "stab, cut, or wound" any person, it was held that under this statute a person could not be convicted unless the wound was inflicted by some instrument. But sect. 11 of the Offences against the Person Act, 1861, used different language, and made it indictable "by any means whatsoever to wound or cause any grievous bodily harm to any person," and accordingly it was held in *R. v. Bullock* (1868), 1 C. C. R. 117, that this alteration in the language of the statute was intentional, and was made for the purpose of meeting the case of a wound inflicted otherwise than by an instrument, as, for instance, with the hand. 26 & 27 Vict. c. 29, s. 7, enacts that any witness who answered a question put to him by commissioners appointed to inquire into corrupt practices at an election, "shall be entitled to receive a certificate stating that such witness was required by the commissioners to answer questions, the answers to which tended to criminate him, and that he had answered such questions." In *R. v. Price* (1871), L. R. 6 Q. B. 411, it was contended that under this section the commissioners had a discretion as to granting certificates of indemnity, and that they might refuse to grant such certificates if the questions had not in their opinion been satisfactorily answered. In support of this contention it was argued that this enactment was in substance the same as that of 15 & 16 Vict. c. 57, ss. 9, 10, for which 26 & 27 Vict. c. 29, s. 7, had been substituted. It appeared, however, that the earlier statute merely enacted that "where any witness is examined by commissioners, such witness shall not be indemnified unless he receive from such commissioners a certificate. . . ." There was, therefore, a material difference between the language employed in the two statutes, "and when," said Cockburn, C.J., "the Legislature, in legislating *in pari materia* and substituting certain provisions for those which existed in an earlier statute, has entirely changed the language of the enactment, it must be taken to have done so with some intention and motive."]

Language  
may be  
altered with-  
out intending  
to alter  
meaning.

[But although, as has been said, this presumption is generally to be made, and "it is certainly to be wished," as the Judicial Committee said in *Casement v. Fulton* (1845), 5 Moore, P. C. 130, 141, "that, in framing statutes, the same words should always be employed in the same sense"; still, there are many instances to be found of the Legislature departing from

(*t*) How far these Acts were intended to consolidate and to amend respectively is best ascertained by reference to the editions of the Acts published by the late Mr. Greaves, Q.C., the draftsman of the Acts.

language previously used for the purpose of conveying a certain meaning without intending to depart from that meaning. "When the Legislature," said Blackburn, J., in *R. v. Buttle* (1870), 1 C. C. R. 248, 252, "change the words of an enactment, no doubt it must be taken *prima facie* that there was an intention to change the meaning" (u). This, however, is not necessarily so, for we find, as a matter of fact, that, as Blackburn, J., observed in *Hadley v. Perks* (1866), L. R. 1 Q. B. 444, 457, "in drawing Acts of Parliament, the Legislature, as it would seem, to improve the graces of the style, and to avoid using the same words over and over again, constantly change" the words without intending to change the meaning. Thus, in *Re Wright* (1876), 3 Ch. D. 70, 78, Mellish, L.J., said, with regard to the departure in the Bankruptcy Act, 1869, from the language used in the Bankruptcy Act, 1849: "Every one who is familiar with the present Act knows that the language of the former Acts has been very much altered in many cases where it could not have been intended to make any change in the law." And, as Brett, M.R., said in *Att.-Gen. v. Bradlaugh* (1884), 14 Q. B. D. 667, 684: "It was contended that the word 'made' in the expression in the Parliamentary Oaths Act, 1866, 'the oath shall be made,' was to be construed as if it were different from the word 'taken.' But," said Brett, M.R., "it seems to me, looking at the preamble, and at the manner in which the word is used, that the word 'made' has precisely the same effect as if it were 'taken.'"

32 & 33 Vict.  
c. 71.

12 & 13 Vict.  
c. 106.

29 & 30 Vict.  
c. 19.

[In *Monteith v. McGavin* (1838), 5 Cl. & F. 473, 479, Lord Cottenham said that "when Parliament provides for a particular mode of proceeding in one particular case, and makes no such provision in another case, it must not, as a general rule, be assumed that this arises from mere negligence or inattention in the framers of the Act." But, as Brett, M.R., said in *Nottage v. Jackson* (1882), 11 Q. B. D. 627, 630, "persons who draw Acts of Parliament will sometimes use phrases that nobody else uses; consequently we do sometimes meet with expressions in statutes which we are compelled to believe were introduced, not for any specific purpose, but in consequence of the slovenliness of the draftsman." [Thus, in *R. v. Buttle* (1870), L. R. 1 C. C. R. 248, 250, the question was whether, when 26 & 27 Vict. c. 29, s. 7, enacted that "no statement made by any person in answer to any question put by [certain] commissioners shall, except in cases of indictments for perjury, be admissible in evidence in any proceeding," the expression "indictments for perjury" applied to perjury in general, or only to perjury committed before the commissioners. It appeared that a previous statute had contained a similar provision, but that the expression

Exception  
may be  
rebutted if  
statute care-  
lessly drawn.

(u) In 46 & 47 Vict. c. 51, s. 59 (1, b), the old enactment of 15 & 16 Vict. c. 57, s. 8, is re-enacted, thereby showing that the change of words introduced into 26 & 27 Vict. c. 29, s. 7, was not intended to change the meaning.

used in that statute was "indictments for perjury committed in such answers"; consequently it was argued that the Legislature intended a change of meaning by this change of words. It was held, however, that to put upon the expression used in the later statute the meaning contended for would be subversive of one of the most important principles of the common law, and that it must be supposed, therefore, that there was no reason at all for altering the language used by the earlier statute, and that, as Kelly, C.B., said, "whoever framed the statute did it in a slovenly way, and showed great want of care in drawing it." So also, if it appears that the older statute contains words of surplusage, these words may very well be left out in a subsequent Act without there being any intention on the part of the Legislature to alter the law. "It appears to me," said Mellish, L.J., in *Re Wood* (1872), 7 Ch. App. 306, "that the framers of this [later] Act thought it would be an improvement to omit words as to intent in the cases where it was not necessary to prove such an intent, the words being then surplusage and misleading; and I think they may have been very properly left out without in any way altering the law." Therefore, as Jessel, M.R., said in *Hack v. London Provident Building Society* (1883), 23 Ch. D. 103, 108, "it is the duty of the Court first of all to find out what the Act of Parliament under consideration means, and not to embarrass itself with previous decisions on former Acts when considering the construction of a plain statute framed in different words from the former Acts." "Any other course," said the same judge in *Ex parte Blaiberg* (1883), 23 Ch. D. 254, 258, "would be apt to lead us astray. If the later Act can clearly have only one meaning, we ought to give effect to it accordingly. But if, instead of doing this, we compare it with the former Act, and say that it differs from it to such and such an extent . . . and then consider the decisions upon the former Act, we might in that way go back to half-a-dozen older Acts, and, after considering the decisions on them, we might at last arrive at a conclusion exactly contrary to the later Act."

If section of earlier Act is introduced into later Acts.

"Where a single section of an Act," said Lord Blackburn in *Mayor of Portsmouth v. Smith* (1885), 10 App. Cas. 364, 371, "is introduced into another [*i.e.* a subsequent] Act, it must be read in the sense which it bore in the original Act from which it was taken, and consequently it is perfectly legitimate to refer to all the rest of that Act in order to ascertain what the section meant, though those other sections are not incorporated into the new Act. I do not mean that if there was in the original Act a section not incorporated, which came by way of proviso or exception on that which was incorporated, that should be referred to; but all others, including the interpretation clause, if there be one, may be referred to."

Subsequent statutes relevant only

[Light may also be thrown upon the meaning of an Act by taking into consideration enactments contained in subsequent



Acts (x). Sometimes an Act is passed for the express purpose of explaining or clearing up doubts as to the meaning of a previous Act, and is called "An Act of explanation." As to such Acts, Lord Coke has said, in *Butler and Baker's case* (1591), 3 Co. Rep. 31 a, that such an Act "should not be construed by any strained sense against the letter of the previous Act, for if any exposition should be made against the direct letter of the exposition made by Parliament, there would be no end of expounding." So also in Cro. Car. 33, pl. 6, the Court said: "A statute of explanation shall be construed only according to the words, and not with an equity or intendment, for there cannot be an explanation upon an explanation." But Acts of Parliament, without having been passed for the express purpose of explaining previous Acts, are sometimes spoken of as being "legislative declarations" or "parliamentary expositions" of the meaning of some earlier Act. Thus in *Battersby v. Kirk* (1836), 2 Bing. N. C. 584, 609, the Court said: "We cannot but consider these legislative enactments as forming a glossary for the proper interpretation of the expressions in the Bristol Dock Act which are considered to be left in doubt." In *Sandiman v. Breach* (1827), 7 B. & C. 96, 99, the Court said: "The subsequent statutes, which contain regulations as to hackney coaches, are too ambiguous to be taken as legislative expositions of the former Acts." So again, in *Swift v. Jewsbury* (1874), L. R. 9 Q. B. 301, 312, Lord Coleridge, C.J., said: "Whether one looks to the antecedent reason of the thing, or whether one looks to what may be called parliamentary exposition of the statute, upon both grounds it seems to me that the true construction is the one which has been contended for by the defendant." But, as we have already pointed out (y), it is the Courts of law, and not the Legislature, who are the authorised expositors of the statute law of the land, so that anything in the nature of a "parliamentary exposition" of an Act of Parliament is only an argument that may be prayed in aid of attaching some certain meaning to a statute, and cannot be treated as *per se* conclusive.]

as "parliamentary exposition" of prior statutes.

But except as a parliamentary exposition, subsequent Acts are not available on the construction of prior Acts.

It was laid down by A. L. Smith, J. (z), in *Ward v. Folkestone Waterworks* (1890), 62 L. T. 325, that a statute cannot be construed by the light of subsequent statutes. In this case an attempt has been made to construe the Waterworks Clauses Act, 1847, by reference to the Folkestone Water Act, 1888.

10 & 11 Vict. c. 17.

(x) In *Morgan v. London General Omnibus Co.* (1883), 12 Q. B. D. 201 at p. 207, Day, J., expressly withdrew an expression of opinion to which he had previously given utterance at p. 205, as to not "construing the language of an earlier by that of a subsequent one."

(y) *Ante*, p. 13.

(z) His opinion is supported by that of Lord Halsbury in *Knowles v. L. & Y. Rail. Co.* (1889), 14 App. Cas. 248, 253.

Though a private or local Act may repeal to some extent a public general Act, the parliamentary history of local Bills usually excludes the inference that they were intended to explain or construe public general Acts (*a*).

On the other hand, prior Acts may in some cases be construed by the light of subsequent Acts, if the latter by their terms indicate that they were meant as a parliamentary exposition of the meaning of the former.

Expositions of  
text-writers.

3. [Light may also be thrown upon the meaning of an obscure enactment by the exposition of a statute by a text-writer of established repute (*b*)], for "although," as Jessel, M.R., said in *Henty v. Wrey* (1882), 21 Ch. D. 332, 348, "the text-books do not make law; they show more or less whether a principle has been 'generally accepted.' Such expositions are often prayed in aid. "I should have no difficulty," said Jessel, M.R., in *Re Warner's Settled Estates* (1881), 17 Ch. D. 713, "without the assistance of the text-writers; but it is very satisfactory to find they have considered it independently in the same way." [In *Strother v. Hutchinson* (1837), 4 Bing. N. C. 89, it was doubted whether, by 13 Edw. 1, c. 31, a bill of exceptions could be tendered to the judge of a sheriff's court. "If we look only at the express words of the statute," said Tindal, C.J., "the question could not be argued, for the statute refers only to proceedings before the superior Courts. We must look, however, not only to the statute, but to the commentary of Lord Coke, which has been uncontradicted to the present day. . . . When we see the authority of so great a writer not only uncontradicted but adopted in all the digests and text-books, we can scarcely err if we adhere to his opinion." So in *Mayor, &c. of Newcastle v. Att.-Gen.* (1845), 12 Cl. & F. 402, it was a question what was the meaning of the words "all and every person and persons," as used in 39 Eliz. c. 3. It appeared that Lord Coke, in 2 Inst. 722, had explained these words as extending "to such bodies politic as may aliene," but that there had never been any judicial decision on the point. It was sought by the appellants to overrule Lord Coke's opinion as being "an opinion written in a closet, offhand, without any discussion, and not confirmed by any decision in Court." But the House of Lords unanimously adopted Lord Coke's exposition of the statute. Or, if the meaning of some particular word in a statute is doubtful, "the expressions of text-writers, as evidencing the constant practice of the profession" (as Lord

(*a*) Occasionally, as in the case of the London Building Act, 1894, an Act introduced as a private Bill deals with a number of Acts included among the public general Acts, and "corporation" Acts not infrequently substitute a local for a general law so far as concerns the area legislated for.

(*b*) The authority of text-writers is of course very different. "Bacon's reading," said Erle, C.J., in *Heelis v. Blain* (1864), 18 C. B. N. S. 108, "is entitled to very great respect. So Chief Baron Comyns, whose great work stands high in the estimation of every one in the profession."

Cairns said in *Alexander v. Kirkpatrick* (1874), L. R. 2 H. L. (Sc.) 397, 400, with regard to the construction of deeds) may very properly be taken into consideration, especially if there is no interpretation clause in the statute. Thus, in *R. v. Ritson* (1869), 1 C. C. R. 200, the question to be decided was the meaning of the word "forge" in 24 & 25 Vict. c. 98, s. 20. "There is," said Kelly, C.B., "no definition of the word 'forgery' in the statute on which this indictment is framed, but the offence has been defined by very learned authors, and we find that there is among them no conflict of authority." The Court then adopted the definition as laid down in the text-books on the subject.]

4. In *Read v. Bishop of Lincoln*, (1892) App. Cas. 644, 653, Usage. it was held that historical investigation (*c*) may be made as to contemporary usage, and the results used in argument upon an old statute when the facts are ancient facts of a public nature. The *ratio decidendi* was in substance that in such cases contemporaneous usage was material as determining the meaning of the Prayer-book and the Acts establishing it, and that having regard to the lapse of time, historical investigation was of value to supplement the words of the documents under consideration. This decision applies to some extent as a guide to interpretation, but is mainly the affirmation of a rule of evidence as to the mode of ascertaining ancient facts. [But light may be thrown upon the meaning of an obscure enactment by taking into consideration the particular construction which for a long period of time (*d*) has, as a matter of fact, been put upon it. "*Optima legum interpres consuetudo*," said Lord Coke (*e*), in 2 Co. Rep. 81, and this principle still holds good. "We did not think," said the Court in *Cox v. Leigh* (1874), L. R. 9 Q. B. 333, 340, "that the words of the statute are sufficiently wide to justify us in putting a construction upon the statute different from that which has been entertained for 160 years." Thus, in *R. v. Cutbush* (1867), L. R. 2 Q. B. 379, the question arose whether justices have power, under sect. 25 of the Summary Jurisdiction Act, 1848, to sentence to imprisonment which is to commence at the expiration of an existing term of imprisonment. The enactment being similar to that of 7 & 8 Geo. 4, c. 28,

11 & 12 Vict.  
c. 43.

(*c*) See the views of Lord Langdale expressed in the *Gorham case*, noted *ante*, p. 121.

(*d*) That is to say, "one or two centuries," as Lord Watson said in *Clyde Navigation Trustees v. Laird* (1883), 8 App. Cas. 658, 673: but, he added, "*Contemporanea expositio* is of no value in construing a statute passed in the year 1858." *Vide ante*, p. 80.

(*e*) [In 2 Inst. 136, he says: "*Contemporanea expositio est fortissima in lege*"; and (1 Inst. 186 *a*) that *communis opinio* is "of good authority in law: *a communis observantia non est recedendum*."] See also note (69) by Hargrave, where it is said that this was the origin of the maxim, *Communis error facit jus*; a maxim which Lord Kenyon said he "would never resort to": *R. v. Essex* (1792), 4 T. R. 594. As to deeds, see Norton on Deeds (1906), pp. 132-143: and as to documents generally, see *N. E. R. v. Lord Hastings*, (1900) A. C. 260.

s. 10 (rep.), the Court, before arriving at a decision, "thought it important to ascertain what had been the practice of the judges under the last-mentioned Act." Upon ascertaining what had been the practice, they treated it as affording "a contemporaneous expression of the effect of 7 & 8 Geo. 4, c. 28, s. 10," and accordingly held that the statute of 1848 must be construed in the same way (f).]

Construction long acquiesced in will not be departed from even though the construction appears to be incorrect.

[As a general rule, this canon of construction is applied even if the Court be of opinion that the particular construction which has been so long acquiesced in is not the right one], so that if the matter had been *res integra* the Court would have put a different construction on the statute in question. In *Ex parte Willey* (1883), 23 Ch. D. 118, 127, Jessel, M.R., "where a series of decisions have put a [particular] construction on an Act of Parliament, and have thus made a law which men follow in their daily dealing, it has been held, even by the House of Lords, that it is better to adhere to the course of the decisions than to reverse them, because of the mischief which would result from such a proceeding" (g). ["I think," said Lord Cairns in *Inland Revenue Commissioners v. Harrison* (1874), L. R. 7 H. L. 1, at p. 9, "that with regard to statutes of that kind above all others it is desirable not so much that the principle of the decision should be capable at all times of justification, as that the law should be settled, and should, when once settled, be maintained without any danger of vacillation or uncertainty" (h). In *Migneault v. Malo* (1872), L. R. 4 P. C. 123, the question arose as to what was the effect of a Canadian statute passed in 1801, which enacted that, "whereas doubts have arisen touching the method now followed of proving wills before a judge of the courts of civil jurisdiction in the province;

(f) The settled practice of conveyancers has been accepted as *contemporanea expositio* of a statute. See *ante*, p. 83.

(g) [This rule of construction is also acted upon in America. In *McKean v. Delaney* (1809), 5 Cranch (U. S.) 22, 32, Marshall, C.J., said: "Were this Act of 1715 now for the first time to be construed, the opinion of this Court would certainly be that this deed was not regularly proved. . . . But in construing the statutes of a State on which land titles depend, infinite mischief would ensue should this Court observe a different rule from that which has been long established in the State." Similarly, we find that where there has existed for a long series of years a practice in a particular court as to the inadmissibility of evidence of a certain character, the ultimate Court of Appeal will not alter such practice, although it appears that the practice was erroneous in its origin: *Jenverin v. De la Mare* (1861), 14 Moore, P. C. 334. Similarly, with regard to the construction of ancient documents, Lord Chelmsford said, in *Lord Advocate v. Sinclair* (1867), L. R. 1 H. L. (Sc.) 174, 178: "The rule is that ancient documents of every description may, in the event of their containing ambiguous language, be interpreted by what is called contemporaneous and contemporaneous usage under them." And in *Nicol v. Paul* (1867), L. R. 1 H. L. (Sc.) 127, 131, Lord Westbury said: "A very liberal interpretation should be given to the language of these decrees, so as to support long usage, and the conclusions which may fairly be derived from the acquiescence of persons who had an interest in determining them if not well founded."]

(h) But see *ibid.* (1889), 14 App. Cas. 209, 222, Lord Macnaghten.

be it therefore enacted, that such proof shall have the same force and effect as if made and taken before a Court of Probate." "At first sight," said the Judicial Committee, "it certainly appeared to their lordships that this language availed to introduce the law of England with respect to the conclusiveness of a probate duly granted into the law of Canada. . . . This, moreover, appears to their lordships to be the *true construction* of the words 'such proof shall have the same force and effect as if made and taken before a Court of Probate.' Their lordships, however, think that they cannot consider this matter now as *res integra*. They cannot disregard the practice of the Canadian Courts with respect to it for the last seventy years. They have therefore made as careful an investigation into the practice as circumstances permit." . . . (And at p. 139), "Upon the whole, it appears to their lordships that, by the uninterrupted practice and usage of the Canadian Courts since 1801, the law has received an interpretation which does not affix to the grant of probate that binding and conclusive character which it has in England . . . their lordships therefore think that they ought not to advise Her Majesty that a different construction ought *now* to be put upon the law." Similarly, in *Evanturel v. Evanturel* (1869), L. R. 2 P. C. 462, which turned upon the construction of Article 289 of the *Coutume de Paris*, as declared by the Parliament of Paris in 1580, the Court said as follows: "It appears therefore to their lordships, that even if the French authorities were admitted to be in favour of the stricter construction of the article in question, the latter interpretation has, both by decision and long usage, acquired the force of law in Lower Canada."]

In *London County Council v. Erith Overseers*, (1893) App. Cas. 562, 598, Lord Herschell said, with reference to *R. v. W. Middlesex W. W.* (1859), 1 E. & E. 716, under which underground sewers had been held exempt from rates: "I entirely concur in deeming it inexpedient to interfere, in such a matter as this, with a long course of practice supported by decisions which are not of very recent date. Therefore, even if it be not possible to rest upon grounds altogether satisfactory the exemption of these sewers, yet on the case being, as I have said, a very particular one, I could not advise your lordships to depart from a practice which has prevailed for a very long period, and which has been sanctioned by judicial authority" (i). And judges are particularly unwilling to upset long established usage or decisions on statutes which affect the form or contents of contracts.

Lord Esher, M.R., in *Philipps v. Rees* (1889), 24 Q. B. D. 17, 21, said, as to a decision on the construction of a contract: "If

(i) As to the limits of the exemption, see *Trusts, &c. Sewerage Bd. v. Newport Union*, (1901) 1 K. B. 406 (C. A.), and *Ryde on Rating* (2nd ed.), p. 143.

this were a contract in daily use, and if the decision which we are overruling had been acted upon throughout the country for a long time, it might be that we should feel bound to follow it, on the ground of the number of persons who had acted upon it, even though we did not agree with it." Lord Fitzgerald, in *Harding v. Howell* (1889), 14 App. Cas. 315, put the same rule as follows:—"Their lordships do not intend in the least to question the principle which governs the construction and effect of that statute as now long established by decided cases. It has been said over and again, that 'so many titles stand on it that it must not be shaken,' and in that their lordships concur." And in *Lanc. and Yorks. Rail. Co. v. Bury Corporation* (1889), 14 App. Cas. 417, a case upon sect. 46 of the Railways Clauses Consolidation Act, 1845 (8 & 9 Vict. c. 20), Lord Herschell said: "A construction was put upon the clause with which we are now dealing as long ago as 1858, and by very learned judges of the Court of Queen's Bench (*k*). The view so taken was shortly afterwards approved and followed by the Court of Exchequer (*l*). And there are, as it seems to me, special reasons why a judgment so given should not be disturbed, unless it be clearly shown to have proceeded upon an erroneous view of the law, inasmuch as the clause which there received construction was contained in an enactment which did not of itself produce any legal results; it only had effect if incorporated by a subsequent Act of the Legislature in statutes giving powers to railway companies. And one cannot but see that the construction put upon an enactment of that description may well have affected the action of the Legislature in subsequent cases when they had to consider what obligations they should or should not impose upon the railway companies to whom they were giving powers. At the same time, if it could be established that the decision was manifestly erroneous, your lordships would be bound to give effect to that view, and to hold that the statute must be construed according to its natural meaning, notwithstanding the interpretation which had so long ago been put upon it by eminent judges" (*m*).

Usage is not admitted as interpreting a statute or rule, unless established uniformly and for a long period. Eight years was held by Lord Blackburn (in *Danford v. M'Anulty* (1882), 8 App. Cas. 456, 463) insufficient to establish a particular construction of R. S. C. 1875, Ord. 19, r. 50, as to pleading possession in an action for ejectment.

(*k*) *North Staffordshire Rail. Co. v. Dale* (1857), 8 E. & B. 836.

(*l*) *Newcastle Turnpike Trustees v. North Staffordshire Rail. Co.* (1860), 5 H. & N. 160.

(*m*) In *Maddison v. Emmerson* (1906), not yet reported, the J. C. affirmed a decision of the Supreme Court of Canada overruling a clearly erroneous interpretation which had been put upon 21 Jas. 1, c. 14, by the Supreme Court of New Brunswick in deference to the current of decisions in that province.

Fry, L.J., in *Reid v. Reid* (1886), 31 Ch. D. 402, 410, said: "We are told that a series of decisions on this section has gone far to establish the rights under it; but looking at the conflict which has taken place in the courts of first instance, it appears to me impossible to say that there is any course of decisions which can in any way bind, or ought seriously to influence, the Court, although we shall always look with the greatest possible respect on the reasons for which the judges of first instance have come to their decisions." In *Clyde Navigation Trustees v. Laird* (1883), 8 App. Cas. 658, it was in dispute whether the Clyde Navigation Consolidation Act, 1858 (repealing eight prior Acts), imposed navigation dues on timber floated up the Clyde in logs chained together. From 1858 to 1882 dues had been levied on this class of timber without resistance from the merchants who owned it; and some judges in the Court of Session suggested that this non-resistance might be considered in construing the statute. On this Lord Blackburn (at p. 670) said: "I think that [submission] raises a strong *prima facie* ground for thinking that there must exist some legal ground on which they [the merchants] could not resist. And I think a Court should be cautious, and not decide unnecessarily that there is no such ground. If the Lord President [Inglis] means no more than this when he calls it '*contemporanea expositio* of the statutes which is almost irresistible,' I agree with him [see *ante*, p. 80]. I do not think that he means that enjoyment at least for any period short of that which gives rise to prescription, if founded on a mistaken construction of a statute, binds the Court so as to prevent it from giving the true construction. If he did, I should not agree with him, for I know of no authority, and am not aware of any principle, for so saying."

Limitations on the rule.

21 & 22 Vict. c. cxlix.

[And it is important to bear in mind, as Grose, J., pointed out in *R. v. Hogg* (1787), 1 T. R. 728, that although "where the words of an Act are doubtful, usage may be called in to explain them," still that "usage ought not to be attended to in construing an Act of Parliament which cannot admit of different interpretations." "Where," said Lord Brougham, in *Magistrates of Dunbar v. Duchess of Roxburgh* (1835), 3 Cl. & F. 325, 354; 6 Eng. Rep. 1462, "a statute speaking on some points is silent as to others, usage may well supply the defect; for where the statute uses language of doubtful import, the acting under it for a long course of years may well give an interpretation to that obscure meaning and reduce that uncertainty to a fixed rule . . . but it is quite plain that against a plain statutory law no usage is of any avail." And in *Northam Bridge Co. v. R.* (1886), 55 L. T. 759, Chitty, J., held that neither usage nor long-continued practice (for eighty years) could render the Crown liable to pay bridge tolls from which it was exempted by the plain terms of the Post Office Management Act, 1837 (n).

Usage will not affect construction of statute if meaning is plain.

7 Will. 4 & 1 Vict. c. 33.

(n) See also the authorities cited *ante*, pp. 80—83.

Nor will usage operate unless particular construction has been universally acquiesced in.

[Again, usage cannot be operative as an interpreter of a statute unless it appears that the statute in question has been universally construed in a particular way. "If," said Lord Cottenham in *The Waterford Peerage Claim* (o) (1832), 6 Cl. & F. at p. 172, "there has been a course of decisions, and the decision first made has been adhered to and confirmed by other decisions, that is what is called a current of authorities too strong to be resisted. . . . I am not aware of any case in which a single decision, even of a Court of competent jurisdiction, having before it properly and judicially the matter on which it was pronouncing a judicial decision, has been held to operate so upon the plain meaning of a statute." Thus, in *Bank of Ireland v. Evans's Charity* (1855), 5 H. L. C. 405, it appeared that it has been the usual, but not the universal, practice to make up record, when a bill of exceptions had been tendered, in a particular way in accordance with what was supposed to be the meaning of 28 Geo. 3, c. 31. But the House of Lords, acting on the opinion of the judges, held that this statute had been wrongly understood. "The answer to the question put to us," said the judges, "depends wholly on the construction of the Irish Act of 28 Geo. 3, c. 31. We understand that in acting upon the statute in Ireland a practice has been prevalent, though not universal, which is at variance with our opinion as to its proper construction. We conceive that the meaning of the Act is so clear that we ought not to give any weight to the practice." Similarly, in *R. v. Hogg* (1787), 1 T. R. 728, it was argued that a certain class of property in Rochester was not liable to be rated under 43 Eliz. c. 2, s. 1, because it was not the custom of the town to rate that class of property. But this argument did not prevail. "We are," said Grose, J., "interpreting a universal law, which cannot receive different constructions in different towns. It is the general law that this kind of property should be rated, and we cannot explain the law differently by the usage of this or that particular place." He added that while an agreement among the inhabitants might bind them, it was no guide to the construction of the statute (p).

Statutory rules.

5. Where the language of an Act is ambiguous and difficult to construe, the Court may, for assistance in its construction, refer to rules made under the provisions of the Act, especially where such rules are by the statute authorising them directed to be read as part of the Act.

For not only is every part of the statute itself to be taken into consideration in order to ascertain the meaning of any

(o) [It was argued in this case that an opinion given by Lord Coke and the two other chief judges of England, at the request of the Privy Council, upon the effect of the Irish statute, 28 Hen. 8, c. 3, ought to be conclusive, even though erroneous.]

(p) *Vide ante*, p. 77, and *N. E. R. v. Lord Hastings*, (1900) A. C. 260, 268, Lord Davey.



obscure expression, but "recourse may [also] be had to rules which have been made under the authority of the Act, if the construction of the Act is ambiguous and doubtful on any point, and if we find that in the rules any particular construction has been put on the Act, it is our duty to adopt and follow that construction": per James and Mellish, L.JJ., in *Ex parte Wier* (1871), 6 Ch. App. 879.

These rules form a sort of *contemporanea expositio*. But it is not clear whether they are to be deemed—

- (a) The practice of conveyancers;
- (b) Parliamentary exposition; or
- (c) Administrative exposition.

Rules made for the Courts may be regarded as judicial expositions of the Act (*q*). But too much stress cannot be rested upon rules, inasmuch as they may be questioned as being in excess of the powers of the subordinate body to which Parliament has delegated authority to make them (*r*).

(*q*) Per Lord O'Hagan in *Danford v. M'Anulty* (1882), 8 App. Cas. 456, 460.

(*r*) Terms used in statutory rules made after 1889 are construed in the same way as the terms used in the statute authorising the making of the rules, unless a contrary intention appears: Interpretation Act, 1889 (52 & 53 Vict. c. 63), s. 31. As to the interpretation of such rules, see *post*, Bk. II. ch. iii.

## CHAPTER V.

## INTERPRETATION OF WORDS.

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Interpreta-  
tion by con-  
text.

1. THE best dictionary (*a*) is but a guide to the true meaning of a word in a particular context, and can never be an absolute authority on so varied and fluctuating a subject as language. It facilitates the comparison of the different meanings of a word, and aids the memory of the person in search of the particular meaning, but can rarely anticipate the exact colour which will

(*a*) The position of a writer on the construction of statutes is at best that of the author of a judicial lexicon. He can at most be a compiler and arranger of materials, and can but facilitate the formation of the judgment of others by arranging and marshalling the materials furnished by the statute-book and by judicial decisions thereon.

be given to any word or phrase by the context in which it is set.

The true mode of ascertainment is that said to have been first used by Sir Thomas More (*b*), viz., that words cannot be construed effectively without reference to their context.

Their meaning is to be ascertained by reference to the whole of the Act, including, if necessary, the preamble (*c*) (*Colquhoun v. Brooks* (1889), 14 App. Cas. 493), and, perhaps, even the full title. "A statute must be read as a whole, therefore, the language of one section may affect the construction of another" (*d*). But now that Acts are divided into separate sections, each having effect as a substantive enactment without introductory words (*e*), the section in which the obscure words occur is first to be considered (*f*). It is only in a second or last resort that the rest of the statute, or the preamble, or the scheme or governing intention is to be regarded.

It is a well-established rule of grammar that the meaning of words depends largely, if not wholly, upon their collocation, and the statutory rule of construction is to follow the rules of grammar if possible. It is, however, by no means unusual for Parliament, by interpretation clauses, to alter the ordinary meaning of words.

Ordinary dictionaries are somewhat delusive guides in the construction of statutory terms. In *Midland Rail. Co. v. Robinson* (1889), 15 App. Cas. 19, 34, the question arose whether the word "mine" in sect. 77 of the Railways Clauses Act, 1845, included beds or seams which could only be worked by open or surface operations. Lord Herschell had cited Dr. Johnson as defining a quarry to be a "stone mine." But Lord Macnaghten (at p. 34) said: "I continue to think that the word [mine] was used both in the heading and in the section in the sense in which, if I am not mistaken, every English judge who had occasion to consider the meaning of the word before *Farie's case* was decided, took to be its ordinary signification. It seems to me that on such a point the opinions of such judges as *Kindersley, V.-C.*, *Turner, L.J.*, and *Sir George Jessel* are probably a safer guide than any definitions or illustrations to be found in dictionaries." Use of dictionaries.  
8 & 9 Vict. c. 20.  
(1888) 13 App. Cas. 657.

(*b*) "Here I will remark, that no one ever lived who did not at first ascertain the meaning of words, and from them gather the meaning of the sentences which they compose—no one, I say, with one single exception, and that is our own Thomas More. For he is wont to gather the force of the words from the sentences in which they occur, especially in his study of Greek. This is not contrary to grammar, but above it, and is a mark of genius" (Pace, quoted in *Bridgett's Life of More*, p. 12).

(*c*) *Post*, p. 183.

(*d*) *Ilbert*, *Statutory Methods and Forms*, 250.

(*e*) *Interpretation Act*, 1889, s. 8. It is by virtue of this general rule that the *Statute Law Revision Acts* excise the words of enactment in Acts passed before 1850.

(*f*) *Spencer v. Metropolitan Board of Works* (1882), 22 Ch. D. 142, 162, *Jessel, M.R.*

No doubt reference to the better dictionaries does afford, either by definition or illustration, some guide to the use of a term in a statute. Lord Coleridge said, in *R. v. Peters* (1886), 16 Q. B. D. 636, 641: "I am quite aware that dictionaries are not to be taken as authoritative exponents of the meanings of words used in Acts of Parliament, but it is a well-known rule of Courts of law that words should be taken to be used in their ordinary sense, and we are therefore sent for instruction to these books." There is not at present any complete English dictionary, such as that of Grimm in German or Littré in French, which affords an adequate amount of apt illustration for the accurate ascertainment of the meaning of an ambiguous word, and the statutory context is probably a far better guide than any lexicon. But the Oxford Dictionary of the English Language bids fair to surpass the efforts of its continental predecessors, and to be constructed on a superior method.

Till quite recently the terminology of statutes has been mainly derived from what may be called the dictionary of law, and the accurate interpretation of legal terms is to be sought in decided cases or authoritative works rather than in popular dictionaries. Law books are usually altogether at sea about the derivation of law terms, but are generally pretty accurate as to their received meaning.

Where terms of art are used, reference must be made to books which show the sense in which they were understood when the statute in question was passed.

Thus, "political crime" in *Re Castioni* (*g*) was defined after considering Mill's and Stephen's discussions of its meaning. And "direct taxation" in the British North America Act of 1867 was determined by regard to works on political economy (*h*).

Legislative  
dictionary.  
Interpretation  
clauses.

(a) The more modern statute contains, in the form of an interpretation clause, a little dictionary of its own, in which it endeavours to define, often arbitrarily, the chief terms used. Any ambiguity in the definition of such terms can rarely be solved otherwise than by examination of the statute itself, or other enactments with which it is to be read by reason of its subject-matter or the direction of the Legislature.

The Inter-  
pretation Act,  
1889.

(b) Besides the special interpretation clauses now usual, the Interpretation Act of 1889 (52 & 53 Vict. c. 63) (*i*) has provided many general statutory interpretations of words presumably applicable, "unless a contrary intention appears," in all Acts, whether public, local and personal, or private (*k*). These definitions sometimes overlap those in prior Acts, but do not touch the prior definitions, except so far as the Interpretation Act

(*g*) (1891) 1 Q. B. 149.

(*h*) *Bank of Toronto v. Lambe* (1887), 12 App. Cas. 575, 581; *Brewers, &c. Association of Ontario v. Att.-Gen. for Ontario*, (1897) A. C. 231, 236.

(*i*) Printed in full in Appendix C. For a list of Colonial Interpretation Acts, see Appendix C.

(*k*) Int. Act, 1889 (52 & 53 Vict. c. 63), s. 39.

repeals and re-enacts, with or without modification, the substance of prior legislation.

Where the Act of 1889 contains a rule as to construing Acts passed after 1889, it does not affect the construction of Acts passed before that date, although continued or amended by Acts passed after 1889 (*l*).

Those definitions which are of most general importance are set out below, the rest being relegated to Appendix A.

In all Acts passed since 1850, and in the case of offences punishable on an indictment or on summary conviction, also in Acts passed in or before that year relating to the offence, words importing the masculine gender include females, and words in the singular include the plural, and words in the plural include the singular (*m*). Lord Selborne, in *Conelly v. Steer* (1881), 7 Q. B. D. 520, accepted as of general validity the latter part of this rule, saying: "In construing a statute, plural is to be read as singular whenever the nature of the subject-matter requires it." Number and gender.

The Interpretation Act, 1889, lays down the following rules as to the meaning of the word "person":—

In the Act and in all Acts passed since 1889 it includes any body of persons, corporate or unincorporate, unless a contrary intention appears (*n*). In all Acts, *whenever passed*, under which a forfeiture or penalty is payable to a party aggrieved, it is payable to a body corporate where that body is the party aggrieved (*o*). And in the construction of all enactments, *whenever passed*, creating an offence punishable on indictment or on summary conviction, the expression "person," unless a contrary intention appears, includes a body corporate (*p*). This rule gives statutory effect to the rule of construction of "person" as stated by Lord Selborne, L.C., in *Pharmaceutical Society v. London and Provincial Supply Association* (1880), 5 App. Cas. 857, 861, where it was decided that "person" in sects. 1, 15, of the Sale of Poisons Act, 1868 (31 & 32 Vict. c. 121), did not include a corporation:—"There can be no question that the word 'person' may, and I should be disposed myself to say *primâ facie* does, in a public statute include a person in law, that is, a corporation, as well as a natural person. But although that is a sense which the word will bear in law, and which, as I said, perhaps ought to be attributed to it in the construction of a statute, unless there should be any reason for a contrary construction, it is never to be forgotten that in its popular sense and Person.

(*l*) Int. Act, s. 40.

(*m*) Int. Act, s. 1; repealing and re-enacting 7 & 8 Geo. 4, c. 28, s. 14.

(*n*) Sect. 19.

(*o*) Sect. 2 (2); see *Cortis v. Kent W. W.* (1827), 7 B. & C. 314; *Boyd v. Croydon Rail. Co.* (1838), 4 Bing. N. C. 669; *Ex parte Speering* (1890), 11 N. S. W. Rep. Law, 407.

(*p*) Sect. 2 (1), *vide infra*, Part III. ch. iii.

ordinary use it does not extend so far. Statutes, like other documents, are constantly conceived according to the ordinary use of language; and it is certain that this word is often used in statutes in a sense in which it cannot be intended to extend to a corporation. That accounts for the frequent appearance in some statutes of an express declaration that it shall extend to a body politic or corporate." And he added (p. 862): "If a statute provides that no person shall do a particular act except on a particular condition, it is *prima facie* natural and reasonable (unless there be something in the context, or in the manifest object of the statute, or in the nature of the subject-matter to exclude that construction) to understand the Legislature as intending such persons as, by the use of proper means, may be able to fulfil the condition; and not to those who, though called 'persons' in law, have no capacity to do so at any time, by any means, or under any circumstances whatsoever" (q). Neither this judgment nor the provisions of the Interpretation Act, 1889, absolve the Court from the necessity to inquire under every penal statute whether its context supports or rebuts the statutory presumption that corporations are liable to the penalties imposed (r).

Time.

Unless a contrary intention appears, "month" means calendar month in every Act passed after 1850 (s), and in contracts for the sale of goods is presumed to have the same meaning (t).

Expressions of time in statutes, deeds, or instruments, unless it is otherwise specifically stated, are to be construed as referring to Greenwich mean time for Great Britain and to Dublin mean time for Ireland (u). But this rule does not apply to such times as sunrise or sunset (x).

In computing the time within which an act is to be done it is usual to exclude the first day and include the last day unless the words "clear days" are used, in which case both the first and last days are excluded (y).

"Commencement," as applied to all Acts, means the time

(q) See also p. 869, observations by Lord Blackburn as to offences of which a corporation is capable.

(r) See *Pearks, Gunston & Tee, Ltd. v. Ward*, (1904) 1 K. B. 1, 11, Channell, J.

(s) Int. Act, s. 34. The computation is the same both for civil and criminal cases. But in the Prison Act, 1898 (61 & 62 Vict. c. 41), it was deemed necessary to provide that in all sentences of imprisonment passed after 31st December, 1898, the word "month" should be construed as meaning calendar month unless a contrary intention is expressed. In the United States, whether in Federal or State Acts, *prima facie* "month" means calendar and not lunar month. The English rule was never followed: *Guaranty Trust Co. v. Green Cove Railroad* (1890), 139 U. S. 145, Brown, J. At common law the primary meaning of the term "month" has been held to mean lunar month: *Lacen v. Hooper* (1795), 6 T. R. 226; *Bruner v. Moore*, (1905) 1 Ch. 305, Farwell, J. In the Ecclesiastical Courts "month" meant calendar month: *Catesby's case* (1606), 6 Co. Rep. 62 a.

(t) 56 & 57 Vict. c. 71, s. 10.

(u) 43 & 44 Vict. c. 9. There is similar legislation in the Australian Colonies.

(x) *Gordon v. Cann* (1899), 68 L. J. Q. B. 434.

(y) See Appendix B., s. v. "Day."

when the Act comes into operation (*z*), *i.e.* immediately on the expiry of the day previous to the giving of the Royal assent, or to the date specified in the Act for its coming into operation (*a*). This definition applies also to Orders in Council, orders, warrants, schemes, letters patent, rules, regulations, and by-laws made under statutory powers given by Acts passed after 1889.

“Financial year” in Acts passed since 1889 means, as to matters relating to the Consolidated Fund, or moneys provided by Parliament, or to the Exchequer, or to Imperial taxes or finances, the twelve months ending the 31st day of March (*b*). The term “local financial year” in Acts relating to local government in England, means the twelve months ending March 31 (*c*). This definition does not apply to the financial year for purposes of poor law accounts and audit.

In Acts passed in or since 1890 distance is measured in a Distance. straight line on a horizontal plane (*d*).

In all Acts expressions referring to writing are to be read as Writing: including printing, lithography, photography, and other modes of reproducing words in a visible form (*e*). This definition appears to get rid of the difficulty which arose in *R. v. Courper* (1889), 24 Q. B. D. 60, 533, as to the printed signature of a solicitor to a document.

“Oath” and “affidavit,” in the case of persons allowed to Oath. affirm or declare instead of swearing, include “affirmation” and “declaration,” and the term “swear” includes “affirm” (*f*). This definition does not apply to what are usually called statutory declarations, made under the Statutory Declarations Act, 5 & 6 Will. 4, 1835 (*g*). The latter are substitutes for oaths in certain cases c. 62. for all persons, without regard to questions of religious belief or unbelief.

In Acts passed between 1850 and 1890, “county” includes County. county of a city and county of a town as well as a county at large (*h*).

In Acts passed since 1889, “borough,” when used with refer- Borough. ence to local government, means a municipal borough in a place, including a city, for the time being subject to the Acts relating to municipal corporations in England or Ireland (*i*). When used with reference to parliamentary elections or the registration

(*z*) Int. Act, s. 36 (1).

(*a*) See *Cole v. Porteous* (1892), 19 Ont. App. 111.

(*b*) Int. Act, s. 22. The old financial year began 25th March (O. S.), *i.e.*, 5th April (N. S.).

(*c*) 51 & 52 Vict. c. 41, s. 73 (1), and 56 & 57 Vict. c. 73, s. 75 (1); 62 & 63 Vict. c. 14, s. 14.

(*d*) Int. Act, s. 3 (*cf.* 13 & 14 Vict. c. 21, s. 4).

(*e*) Int. Act, s. 20.

(*f*) Int. Act, s. 4. See Oaths Act, 1888; Archbold, Cr. Pl. (23rd ed.), 1053.

(*g*) Int. Act, s. 21.

(*h*) Int. Act, s. 4 (*cf.* 13 & 14 Vict. c. 21, s. 4).

(*i*) It therefore does not apply to the City of London nor to a metropolitan borough created under 62 & 63 Vict. c. 14.

of parliamentary electors, it means any borough, burgh, place, or combination of places (other than a county or division of a county, or a university or combination of universities) which returns a member to serve in Parliament (*k*).

Parish. In Acts passed since 1866, "parish" means, as respects England and Wales, a place for which a separate poor rate is or can be made, or for which separate overseers are appointed (*l*).

Poor law union. In Acts passed since 1889, "poor law union" means, as to England and Wales, any parish or union of parishes for which there is a separate board of guardians elected under the Poor Law Act, 1834, or amending Acts, or body of persons performing under any local Act the like functions (*m*).

4 & 5 Will. 4, c. 76. "Shall" and "may." The meaning of the words "shall" and "may" is the subject of constant and conflicting interpretation. The proper rule is laid down in *Julius v. Bishop of Oxford* (1881), 5 App. Cas. 214, which arose on the meaning of the words "it shall be lawful" in the Church Discipline Act, 1842. Lord Cairns (at p. 222) states it in these terms: "The question has been argued, and has been spoken of by some learned judges in the Courts below, as if the words 'it shall be lawful' might have a different meaning and might be differently interpreted in different statutes or in different parts of the same statute. I cannot think that this is correct. The words 'it shall be lawful' are not equivocal. They are plain and unambiguous. They confer a faculty or power, and they do not of themselves do more than convey a faculty or power. But there may be something in the nature of the thing empowered to be done, something in the object for which it is to be done, something in the conditions under which it is to be done, something in the title of the person or persons for whose benefit the power is to be exercised, which may couple the power with a duty, and make it the duty of the person in whom the power is reposed to exercise that power when called upon to do so. Whether the power is one coupled with a duty such as I have described is a question which, according to our system of law, speaking generally, it falls to the Court of Queen's Bench to decide on an application for a *mandamus*" (*n*).

3 & 4 Vict. c. 86. Ordinary terms and expressions It should be observed that the word "shall" is now avoided in statutes except where it creates a duty. It is, as a rule, not used as a future tense. In certain Acts "shall and may" are put together (*e.g.* 11 & 12 Vict. c. 42). They seem to create a judicial duty, but in certain cases may be perhaps held to create a ministerial duty.

2. There are two rules as to the way in which ordinary terms and expressions are to be construed when used in an Act of

(*k*) Int. Act, s. 15.

(*l*) Int. Act, s. 5.

(*m*) Int. Act, s. 16 (1), (2). For Irish definition, see sub-ss. (3), (4).

(*n*) He then proceeded to discuss the previous cases, as did Lord Penzance at p. 230, and Lord Blackburn at p. 240.



Parliament. [The first rule was stated by Lord Tenterden in *Att.-Gen. v. Winstanley* (1831), 2 D. & Cl. 302, 310, to be that "the words of an Act of Parliament which are not applied to any particular science or art" are to be construed "as they are understood in common language" (o).] Critical refinements and subtle distinctions are to be avoided, and the obvious and popular meaning of the language should, as a general rule, be followed (p). "I know," said Bramwell, B., in *Re Barker* (1861), 30 L. J. Ex. 407, "that Acts of Parliament are to be interpreted by lawyers, but the language of this Act seems to me to admit of but one construction." "It is incumbent," said Willes, J., in *Mansell v. R.* (1857), 8 E. & B. 73, 109, "on those who say that any word is a 'term of art,' for which no equivalent can be substituted, to show that it has been so held." [In other words, as was said by Pollock, B., in *Grenfell v. Inland Revenue Commissioners* (1876), 1 Ex. D. 242, 248, if a statute contains language which is capable of being construed in a popular sense, such "a statute is not to be construed according to the strict or technical meaning of the language contained in it, but is to be construed in its popular sense, meaning, of course, by the words 'popular sense' that sense which people conversant with the subject-matter with which the statute is dealing would attribute to it." "I base my decision," said James, L.J., in *Cargo ex Schiller* (1877), 2 P. D. 145, 161, "on the words of the statute as they would be understood by plain men who know nothing of the technical rule of the Court of Admiralty, or of flotsam, lagan, and jetsam." Thus, in *Sherwood v. Ray* (1837), 1 Moore, P. C. 353, 395, it was held that the expression, "a suit which shall be depending at the time of the passing of this Act," as used in 5 & 6 Will. 4, c. 54, s. 1, was not to be understood as an equivalent for the technical term *lis pendens*, or "to be construed in any other than their ordinary and popular sense." And in *Att.-Gen. v. Bailey* (1847), 1 Ex. 281, it was held that the word "spirits," being "a word of known import . . . is used in the Excise Acts (q) in the sense in which it is ordinarily understood." "We do not think," said the Court (at p. 292), "that, in common parlance, the word 'spirits' would be considered as comprehending a

to be construed according to their popular sense.

(o) "*Uti loquitur vulgus*," as Dr. Lushington said in *The Fusilier* (1864), 34 L. J. (P. & M.) 25, 27.

(p) Bell, Dict. Law of Scotland, tit. Statute.

(q) [In America the rule of interpretation adopted in construing Excise Acts is, that the particular words used by the Legislature in the denomination of articles are to be understood according to the common commercial understanding of the terms used, and not in their scientific or technical sense, "for the Legislature does not suppose our merchants to be naturalists, or geologists, or botanists"; consequently, the word "bohea," when used in an excise law, means "that article which, in the known usage of trade, has acquired that distinctive appellation." See 200 *Chests of Tea* (1824), 9 Wheaton (U. S.), 435, Story, J. See also *Elliott v. Swartout* (1836), 10 Peters (U. S.), 151, as to the meaning of "worsted"; and *U. S. v. Breed* (1832), 1 Sumner (U. S.), 159 (Story, J.), as to the meaning of "loaf-sugar."]

liquid like 'sweet spirits of nitre,' which is itself a known article of commerce not ordinarily passing under the name of 'spirits.'"]

The strict sense may mean the etymological or scientific sense as well as the legal or technical. As to the first, Grove, J., said in *Gordon v. Jennings* (1882), 9 Q. B. D. 45, 46 (a case on 33 & 34 Vict. c. 30, s. 1): "Now, it may be that the term 'wages,' according to the etymological meaning of the word, may be correctly applied to any remuneration for services, but it seems to me that the popular signification must be looked to."

Scientific language.

Lord Esher, M.R., in *R. v. Commissioners under Boiler Explosions Act*, 1882, (1891) 1 Q. B. 703, in considering the meaning of the term, "boiler," said (at p. 716): "I apprehend that in this Act it was not meant to draw scientific distinction, but to deal with the thing in which there is steam under pressure which is likely to explode" (*r*). Terms are, however, often used in modern statutes in their scientific sense (*s*).

Ordinary expression not assumed to give unnecessary powers.

The second rule is, as put by Bowen, L.J., in *Wandsworth L. B. v. United Telephone Company* (1883), 13 Q. B. D. 904, 920, "that if a word in its popular sense, and read in an ordinary way, is capable of two constructions, it is wise to adopt such a construction as is based upon the assumption that Parliament merely intended to give so much power as was necessary for carrying out the objects of the Act, and not to give any unnecessary powers" (*t*).

Expressions in statutes sometimes held to be elliptical.

Expressions are sometimes to be found in statutes which require to be somewhat expanded in order to arrive at what is really meant. Thus, in *Robertson v. Day* (1881), 5 App. Cas. 63, it appeared that by the Lands Act Amendment Act (New South Wales), 1875, s. 31, power was given to a Crown lessee to apply to purchase lands comprised within his lease, "provided that no such application should be made for more than one square mile within each block of five miles square out of each lease." It was contended that this enactment gave a right to pre-emption of one square mile *only* if it formed part of a block which was a geometrical square containing an area of twenty-five square miles, and that there was no power to purchase a square mile if the block, although containing twenty-five square miles, was not a precise square. But the Judicial Committee held otherwise. "It is doing," said they, "no violence to language to read the words as if slightly elliptical, and as if they were 'within each block of an area of five miles square.'"

If words susceptible of reasonable

[Another important rule as to the meaning which is to be put upon ordinary words or expressions when used in statutes is, as Keating, J., said in *Boon v. Howard* (1874), L. R. 9 C. P. 277, 308,

(*r*) Cf. *Stanley v. Western Assurance* (1867), L. R. 3 Ex. 71, Kelly, C.B., as to the meaning of the term "gas" in an insurance policy.

(*s*) See Int. Act, 1889, s. 34.

(*t*) Cf. *L. N. W. R. v. Evans*, (1893) 1 Ch. 16.

“that if the words are susceptible of a reasonable and also of an unreasonable construction, the former construction must prevail.”] “That,” said Bowen, L.J., in *Gard v. London Commissioners of Sewers* (1885), 28 Ch. D. 486, 511, “is what Lord Coke calls the *argumentum ab inconvenienti*.” [Thus, in *R. v. Skeen* (1859), 28 L. J. M. C. 91, it appeared that it was enacted by 5 & 6 Vict. c. 39, s. 6, that “no agent shall be liable to be convicted by any evidence whatsoever in respect to any act done by him, if he shall at any time previously to his being indicted for such offence have *disclosed* the same in any examination before a commissioner in bankruptcy.” The prisoner, after he had been committed for trial, but before the indictment, had been examined before a commissioner in bankruptcy, and had then made a statement in every respect in accordance with the evidence upon which he was convicted. The question was raised as to whether the prisoner had made “a disclosure” within the meaning of the above section. It was argued that the statement which the prisoner had made before the commissioner, although containing nothing more than what was proved against him upon his trial, was nevertheless “a disclosure” sufficient to entitle him to be acquitted. But the majority of the Court held otherwise. “If,” said they, “the language employed admit of two constructions, and according to one of them the enactment would be absurd and mischievous, and according to the other it would be reasonable and wholesome, we surely ought to put the latter construction upon it as that which the Legislature intended. . . . For can it be supposed that the Legislature intended wantonly to extend the indemnity to cases where there is no merit whatever in the accused, where he states only what he knows to be already notorious, and where neither civil nor criminal justice can be at all advanced by the alleged disclosure?”<sup>(u)</sup>.]

and also of unreasonable construction, former must prevail.

3. [In the opinion of Lord Thring (*x*), “technical phraseology should be avoided” in drafting Acts of Parliament (*y*); “the word,” says he, “best adapted to express a thought in ordinary composition will generally be found to be the best that can be used in an Act of Parliament.” In *Earl of Zetland v. Lord Advocate* (1878), 3 App. Cas. 505, the question arose as to what was meant by the expression “devolution by law” as used in 16 & 17 Vict. c. 51, s. 2. “Devolution by law,” said Lord Blackburn (at p. 522), “is not a technical set of words. . . . Probably it was purposely chosen as being a phrase which the law had neither appropriated nor to which it had

Technical words better avoided in Acts of Parliament.

<sup>(u)</sup> The enactment interpreted was superseded by 24 & 25 Vict. c. 96, ss. 29-85; Archbold, Cr. Pl. (23rd ed.), 328, 496.

<sup>(x)</sup> “Practical Legislation” (ed. 1902), p. 81.

<sup>(y)</sup> Also it would seem desirable to avoid “language neither wholly popular nor altogether technical, and which, therefore, is not to be interpreted readily either by a lawyer or a layman”: *R. v. Yates* (1882), 11 Q. B. D. 750, 752, Mathew, J.

given any particular meaning, and we have to arrive at its meaning by taking the whole context and looking at the subject-matter, and thus seeing what the words do mean."

But technical words if used, to be construed in technical or legal sense.

5 & 6 Vict.  
c. 35.

But, as Kent observes (Commentaries, vol. i. p. 462), "if technical words are used in a statute, they are to be taken in a technical sense (z), unless it clearly appears from the context, or other parts of the instrument, that the words were intended to be applied differently from their ordinary or their legal acceptance" (a).] The term "technical" can only mean terms of the particular art or subject-matter to which they relate. In *Income Tax Commissioners v. Pemsel*, (1891) App. Cas. 531, at p. 542, Lord Halsbury, in construing the word "charitable" in the Income Tax Act, 1842, demurred to the phrase "technical," and said: "The alternative, to my mind, may be more accurately stated as lying between the popular and ordinary interpretation of the word 'charitable' and (not the technical meaning, but) the interpretation given by the Court of Chancery to the use of the word in the statute of 43 Eliz." c. 2 (Poor Law).

"Indictment."

"There is a well-known principle of construction, that where the Legislature uses in an Act a legal term which has received judicial interpretation, it must be assumed that the term is used in the sense in which it has been judicially interpreted" (b); that is to say, unless a contrary intention appears. And the same rule applies to words with well-known legal meanings, even though not before the subject of judicial interpretation. In *R. v. Slaton* (1881), 8 Q. B. D. 267, it was argued upon the Corrupt Practices Prevention Act, 1863 (26 & 27 Vict. c. 29, s. 7), that the term "indictment" there meant "criminal proceeding." The Court rejected the contention, Denman, J., saying (at p. 272): "It always requires the strong compulsion of other words in an Act (c) to induce the Court to alter the well-known meaning of a legal term." And Bowen, J., added (at p. 274): "The whole of the argument fails if it is not shown that there is a popular use of the term 'indictment' as including 'information.' There is certainly no such popular use of the term among lawyers, and if there is among persons ignorant of the law, it is an incorrect use of the term."

"Proctor."

[54 Geo. 3, c. 68, s. 10, enacted that "in case any person shall do any act, matter, or thing whatsoever, in any way appertaining to the office, functions, or practice as a proctor,

(z) See per Jessel, M.R., in *Laird v. Briggs* (1881), 19 Ch. D. 22, 34.

(a) See *Att.-Gen. v. Mitchell* (1881), 6 Q. B. D. 548, 555, where Lindley, J., said: "Sect. 2 of the Succession Duty Act (16 & 17 Vict. c. 51) is capable of two modes of construction. One is the popular construction . . . but that construction has never been applied to it. The other is a conveyancer's construction." See *Lord Wolverton v. Att.-Gen.*, (1898) A. C. 535, 543.

(b) *Jay v. Johnstone*, (1893) 1 Q. B. 25, 28, Coleridge, C.J. See *Greaves v. Tofteld*, 14 Ch. D. 563, C. A.

(c) *E.g.* in 14 & 15 Vict. c. 100, s. 30.

without being admitted and enrolled, he shall be liable to a penalty." As to this enactment Lord Truro said, in *Stephenson v. Higginson* (1852), 3 H. L. C. 638, 686: "In construing an Act of Parliament every [legal] word must be understood according to the legal meaning, unless it shall appear from the context that the Legislature has used it in a popular or more enlarged sense"; and consequently it was held that the acts intended to be prohibited were those only which were legally incident to the office of a proctor, and not those which, though usually performed by him, were not of right incident to his office (d).]

In Acts relating to the whole of the United Kingdom legal terms are occasionally used in a sense belonging to the legal system of one only. Thus, in *Income Tax Commissioners v. Pemsel*, (1891) App. Cas. 532, 580, "charitable purposes" in the Income Tax Act, 1842, were construed in the sense given by the Court of Chancery to prior English Acts, although the Act extends to Scotland (e). 5 & 6 Vict. c. 35.

"It is a sound rule of construction," said Cleasby, B., in *Courtauld v. Legh* (1869), L. R. 4 Ex. 126, 130, "to give the same meaning to the same words occurring in different parts of an Act of Parliament." [It is quite possible, however, as Turner, L.J., said in *Re National Savings Bank* (1866), 1 Ch. App. 547, 550, "if sufficient reason can be assigned, to construe a word in one part of an Act in a different sense from that which it bears in another part of an Act."] For instance, if, as Fry, L.J., said in *Re Moody and Yates' Contract* (1885), 30 Ch. D. 344, 349, "a word is used inaccurately in one section of a statute, it must not be assumed to have been used inaccurately when it occurs in another section of the same statute." And, in fact, a word may be used in two different senses in the same section of an Act. "It is obvious," said North, J., in *Green v. Smith* (1883), 24 Ch. D. 672, 678, "that the word 'property' is used in sect. 54 of 32 & 33 Vict. c. 71, in two totally different senses." The Court said, in *Doe d. Angell v. Angell* (1846), 9 Q. B. 355: "Considerable difficulty arises in the construction of 3 & 4 Will. 4, c. 27, by reason of the word 'rent' being used in two different senses throughout—viz., in the sense of a rent charged upon land, and of a rent reserved under a lease." Similarly, in *R. v. Allen* (1872), 1 C. C. R. 367, 374, the Court held, as to the word "marry" in 24 & 25 Vict. c. 100, s. 57, which enacts that "whosoever, being married, shall marry any other person during the life of the former husband or wife . . . shall be guilty of felony," that "it is at once self-evident that the proposition that the same effect must be given to the term

Use of same words in different senses in same Act.

(d) [Of. *Rawley v. Rawley* (1876), 1 Q. B. D. 460.] This rule is equally applicable to Scotland: Bell, Dict. Law of Scotland, tit. Statute.

(e) See also *Stephenson v. Higginson* (1852), 3 H. L. C. 631, 686.

‘marry’ in both parts of the sentence cannot possibly hold good” (*f*).

This rule of construction is clearly recognised by Parliament, since it is now usual, in the interpretation clause of every Act, to insert the words, “unless a contrary intention appears,” or “unless the context otherwise requires,” or other similar words cutting down the general application of the definition.

[“Except in mathematics,” said Grove, J., in *Wakefield L. B. v. Lee* (1876), 1 Ex. D. 336, 343, “it is difficult to frame exhaustive definitions of words”; consequently, as the Court said in *R. v. Hall* (1822), 1 B. & C. 123, 136, “the meaning of ordinary words, when used in Acts of Parliament, is to be found, not so much in a strict etymological propriety of language, nor even in popular use, as in the subject or occasion on which they are used, and the object which is intended to be attained.”] Similarly, Brett, M.R., said in *The Dunelm* (1884), 9 P. D. 164, 171: “My view of an Act of Parliament which is made applicable to a large trade or business is that it should be construed, if possible, not according to the strictest and nicest interpretation of language, but according to a reasonable and business interpretation of it with regard to the trade or business with which it is dealing.” [For, as Lord Blackburn said in *Edinburgh Street Tramways Co. v. Torbain* (1877), 3 App. Cas. 58, 68: “Words used with reference to one set of circumstances may convey an intention quite different from what the self-same set of words used in reference to another set of circumstances would or might have produced,”] and therefore it sometimes happens that, as Best, C.J., said in *Wynne v. Griffith* (1825), 3 Bing. 196, “the same words receive a very different construction in different statutes” (*g*). [In *R. v. Hall* (1822), 1 B. & C. 123, 136, it was argued that the word “householder” as used in 26 Geo. 3, c. 38 (defining the qualification necessary for a commissioner of the Court of Requests at Bristol), meant nothing more than (as Johnson’s Dictionary defined it) “a master of a family,” and that it must therefore be taken as synonymous with “resident householder.” On the other hand, it was said that the word must not receive so strict a construction, and that a man might be a householder without being resident. The Court decided in favour of the less restricted meaning of the word, on the

(*f*) In *R. v. Tonbridge Overseers* (1883), 11 Q. B. D. 134, a term was construed in such a way as to throw a double rate on certain persons.

(*g*) Thus the word “apprentice” in 6 Geo. 4, c. 16, s. 49, was held in *Ex parte Prideaux* (1837), 3 Myl. & Cr. 332, not to include an attorney’s articled clerk; but in *St. Pancras v. Clapham* (1860), 2 E. & E. 742, the same word in 3 & 4 W. & M. c. 11, s. 8, was held to include an attorney’s articled clerk. So “bicycle” has been held to be a carriage within the meaning of the Highway Act, 1835 (5 & 6 Will. 4, c. 50) (*Taylor v. Goodwin* (1879), 4 Q. B. D. 228), and of 7 Geo. 3, c. lxxiii. (*Cannan v. Earl of Abingdon*, (1900) 2 Q. B. 66); but not to be a carriage within the meaning of 2 & 3 Will. 4, c. lv. (*Williams v. Ellis* (1880), 5 Q. B. D. 175); nor of the Tonnage Act (5 Geo. 4, c. cxiv.) (*Simpson v. Teignmouth, &c. Bridge Co.*, (1903) 1 K. B. 405 (C. A.)).

Subject and occasion on which words are used may affect meaning.

ground that the object of the statute was to unite respectability of character and circumstances in the place wherein the office of commissioner was to be exercised, with a habit of access and resort to that place, and that this object was attained by excluding, on the one hand, mere lodgers, who had no permanent interest in the place, and on the other hand, persons having neither residence in the place nor such connection with it as might induce a habit of access and resort to it. A decision “Passenger.” was arrived at on similar grounds in the case of *The Lion* (1869), L. R. 2 P. C. 525, 531, as to the meaning of the word “passenger.” After citing the above-mentioned *dictum* of Abbott, C.J., the Judicial Committee held that deducing the meaning of the word from a consideration of “the subject or occasion on which it was used,” the word “passenger” would not include the wife and father of the captain of the ship, who had both been invited by the captain to travel in the ship without the privity of the owners of the ship, and without paying any fare. So, in *Bird v. Bird* (1866), L. R. 1 P. & M. 231, where the Legislature, in 22 & 23 Vict. c. 61, s. 5, gave power to the Court to make orders as to the application of settled property “for the benefit of the children of the marriage or of their respective parents,” it was held that the word “parents” meant the parents of children living at the suit, and not merely persons who had once been parents and whose children were dead, on the ground that “the governing object of the Legislature was to enable the Court to make a provision for the children of the marriage, and only as subsidiary to that object to make provision for the parents” (h). In *R. v. Local Government Board* (1874), L. R. 9 Q. B. 148, 151, the Court said, as to the same word: “We agree that the word ‘office’ in its strict legal meaning would not include such an employment as this . . . but to give the word this strict legal sense would be to render the Act nugatory. We think that we must construe the words of the Act with reference to the subject-matter and the context.” In *Davies v. Kennedy* (1869), Ir. R. 3 Eq. 691, Christian, L.J., proceeded in a very similar way to arrive at the meaning which was to be put upon the word “banker” in 33 Geo. 2, c. 14 (Irish). The question in that case was whether the word was confined to persons who issued notes, or whether it was intended to include all persons who carried on the ordinary business of banking. “‘Banker,’” said he, “is a word which has no legal meaning, or indeed any fixed meaning at all. Consequently, when you have to do with a piece of legislation, the very first question raised on which is, what is the class of persons who are within its scope? you cannot stop at such a word as ‘banker’; you must regard it as an incomplete expression, you must look

(h) This was the reason given by Montague Smith, J., in *Corrance v. Corrance* (1868), L. R. 1 P. & M. 498, for following the decision come to in *Bird v. Bird*. Cf. *R. v. Bridgewater* (1837), 6 A. & E. 339.

carefully into the context, the previous state of the law, the circumstances under pressure of which the Legislature acted, the mischief intended to be remedied in order thus to find out what particular phase of the many-faced thing called banking is the one that the Act was really conversant with. I think it of much importance to start with a clear conception of that." Although this judgment was overruled by the House of Lords (*i*), this dictum was in no way excepted to, and it is here quoted as setting forth in able language the way in which the meaning of any particular word in a statute should be arrived at.]

Rules as to words in statutes conferring the franchise.

[There is said to be a special rule with regard to the construction of words which confer the franchise, viz., that such words must be construed "in their largest ordinary sense." "That is the rule," said Willes, J., in *Piercy v. Maclean* (1870), L. R. 5 C. P. 252, 261, "which has been constantly (*k*) acted upon by this Court in construing the statutes which relate to the franchise." In that case, therefore, it was held that the word "counting-house," in the absence of anything in the subject-matter or in the context to restrain it to any particular sort of counting-house, included anything that is a counting-house in the largest ordinary sense."]

Words in Statute of Distributions, how construed.

There is also a special rule with regard to the construction of words used in statutes which regulate the distribution of personal property. As these statutes apply universally to persons of all countries, races, and religions whatsoever who die intestate and domiciled in England, it appears that the proper law for determining the kindred under such statutes is the international law adopted by the comity of states. In *Goodman's Trusts* (1880), 14 Ch. D. 619, it was held by Jessel, M.R., that the word "children" as used in the Statute of Distributions (22 & 23 Car. 2, c. 10, s. 7), means "children according to the law of England," that is to say, children born in wedlock, and does not include children born of foreign parents before wedlock and legitimated in a foreign country by the subsequent marriage of the parents; or, in other words, as Lush, L.J., put it in his judgment in the case in the Court of Appeal (1881), 17 Ch. D. 290, "that this statute, like any other, must be construed in the sense which the common law puts upon its words, and that 'children' means such, and such only, as are recognised in our table of consanguinity." But in the Court of Appeal the decision of Jessel, M.R., was overruled (1881, 17 Ch. D. 266) (*l*), on the ground that questions of legitimacy are to be decided exclusively by the law of the domicile of origin of the person claiming,

(*i*) *Copland v. Davies* (1872), L. R. 5 H. L. 353, 389.

(*k*) *E.g.* in *Hughes v. Chatham Overseers* (1843), 5 M. & G. 75, 80, the Court said: "Upon an Act of Parliament conferring the franchise the largest ordinary sense is that in which the words ought to be construed."

(*l*) See Dicey, *Conflict of Laws*, p. 506.



and that, therefore, a child born before wedlock, of parents who were at her birth domiciled in Holland, being by the subsequent intermarriage of her parents legitimized according to the Dutch law, must, for the purpose of the Statute of Distributions, be considered as legitimate in England.

[It is, however, a general rule, notwithstanding the fact that (as we have just seen) (*m*) the meaning of ordinary words will vary according to the subject or occasion on which they are used], that if, as Lord Coleridge said in *Barlow v. Teal* (1884), 15 Q. B. D. 403, 405, "Acts of Parliament use forms of words which have received judicial construction, in the absence of anything in the Acts showing that the Legislature did not mean to use the words in the sense attributed to them by the Courts, the presumption is that Parliament did so use them" (*n*). "No doubt it is a general rule of construction that when particular words in a statute have received judicial interpretation and the statute is subsequently repealed and re-enacted in identical terms, the words in the new enactment should be construed in the sense previously attributed to them by the judiciary. But I think that rule only applies to cases of *considered* decisions upon the meaning of particular words in a statute" (*o*).

Words in a statute once judicially interpreted to be understood in that meaning in a subsequent statute.

This rule is especially applicable to terms used in consolidation Acts. In *Mitchell v. Simpson* (1890), 25 Q. B. D. 183, 188, Lord Esher, in speaking of the Sheriffs Act, 1887, said: "The Act of 1887 is a consolidation Act, and the provision in question is in substantially the same terms as that of the Act of Geo. 2, and therefore, in order to determine the meaning of the provision, we must consider to what the Act of Geo. 2 was applicable." This was a strong instance, as the arrest on mesne process, to which the Act of Geo. 2 solely applied, was almost wholly abolished by the Debtors Act, 1869 (32 & 33 Vict. c. 62). In *Re Budgett, Cooper v. Adams*, (1894) 2 Ch. 557, 561, Chitty, J., expressed the opinion that in the interpretation of Acts consolidating and amending prior enactments, as distinguished from codifying Acts (*p*), it was legitimate to refer to the previous state of the law for the purpose of ascertaining the intention of the Legislature. But the rule must be adopted with caution, for it is almost impossible in the process of consolidation to avoid some dislocation and change in the effect of the consolidated enactments. The true effect of such Acts is to combine in a consecutive form the provisions scattered about the Statute-book to avoid repetitions and

50 & 51 Vict. c. 55.

32 Geo. 2, c. 28.

(*m*) *Ante*, p. 158.

(*n*) Cf. *Dixon v. Caledonian Rail. Co.* (1880), 5 App. Cas. 827.

(*o*) *W. v. F. v. v.* (1904), 1 Australia C. L. R. 483, 491, Griffith, C.J. In *W. v. F. v. v.* (1877), 1 Canada S. C. 395, 420, Richards, C.J., said: "I think that the legislative approval of the interpretation of the sections of the statute of 16 Vict. c. 182, by the judgment of the Court of Queen's Bench referred to (*London Municipality v. G. W. R. Co.* (1858), 16 U. C. Q. B. 500), by substantially re-enacting these sections in the Ontario Act, binds us to give the same interpretation to those sections."

(*p*) *Post*, Part II. ch. v.

remove inconsistencies. In *Administrator-General of Bengal v. Prem Lal Mulloch* (1895), L. R. 22 Ind. App. 107, the questions for decision turned on the meaning of the Indian Act II. of 1874. Lord Watson said (p. 116): "The respondent maintained this singular proposition, that in dealing with a consolidating statute each enactment must be traced to its original source, and when that is discovered must be construed according to the state of circumstances which existed when it first became law. The proposition has neither reason nor authority to recommend it. The very object of consolidation is to collect the statutory law bearing upon a particular subject and to bring it down to date in order that it may form a useful Code applicable to the circumstances existing at the time when the consolidating Act is passed."

- "Damage." [In *Rhodes v. Airedale Commissioners* (1876), 1 C. P. D. 380, 390, Lord Coleridge said, with regard to the word "damage," as follows: "The Legislature, in using the word 'damage,' used a word to which a legal meaning had already been affixed by judicial decisions, it must be taken to have used it in the sense ascertained by those decisions, *i.e.*, actionable damage."]
- "Lands." So, in *Edinburgh Water Co. v. Hay* (1854), 1 Macq. H. L. (Sc.) 682, 687, where the question was, whether a certain water company were such occupiers of the land through which their pipes passed as to be liable to be rated under the Poor Law (Scotland) Act, 1845 (8 & 9 Vict. c. 83), the Lord Chancellor (Lord Cranworth), after pointing out that the same question had already been decided with regard to the liability of water companies in England under the Act of 43 Eliz. c. 2, said: "It is impossible to believe that the Legislature could intend that the word 'lands' should mean one thing in an Act with reference to Scotland and another thing in an Act with reference to England, more particularly as the object of the Scotch Act was to introduce into Scotland enactments very analogous to those already existing in England. The Legislature must be supposed to have had the result of the decisions as to the English statute present in its mind when it passed this Act relating to Scotland." In *Davies v. Kennedy* (1869), Ir. R. 3 Eq. 691, Christian, L.J., relied upon this principle in arriving at the meaning of the word "banker" as used in 33 Geo. 2, c. 14 (Irish), an Act passed to extend the enactments contained in 8 Geo. 1, c. 14. The question arose whether this latter Act applied to all bankers or only to those who issued notes. "All are agreed," said the Lord Justice, "that to a right understanding of this later Act, its parent Act, the 8 Geo. 1, c. 14, must first be understood. If the earlier Act cannot in construction be confined to banks of issue, it is admitted that neither can the later one, whilst, on the other hand, if the former can be so confined, an important, though not conclusive, step will have been made towards a similar
- "Banker."

restriction upon the later." Having given his reasons for holding that the earlier Act applied only to bankers issuing notes, he continued as follows: "I have now, I think, attained the proper point of view from which to approach the task of construing the Act of Geo. 2, that is to say, the point of view from which the Legislature of the day must have viewed the measure when they were framing it." He ultimately, after considering the matter at considerable length, came to the conclusion that the Legislature advisedly used the same word in the later Act which they had employed in the earlier Act (*q*).]

[Again, if we find that in previous legislation two different words have been designedly used to express two distinct things, we may assume that in subsequent statutes the Legislature has not lost sight of the distinction uniformly observed in the preceding statutes. Thus, in *Smith v. Brown* (1871), L. R. 6 Q. B. 729, the question was whether the Legislature in enacting in 24 & 25 Vict. c. 10, s. 7, "that the High Court of Admiralty shall have jurisdiction over any claim for *damage* done by any ship," intended to give the Court jurisdiction in cases where personal injuries and death were caused by collisions at sea. It was argued, on the one hand, that the word "damage" was a general word, and that, according to the rule elsewhere (*r*) laid down as to limiting the effect of general words, the word ought to be held to include personal injuries. On the other hand, it was pointed out that in previous enactments on this subject the word "injury" was always used when it was intended to legislate as to personal injuries and loss of life, and that the word "damage" was confined to harm done to property and inanimate things. This latter argument prevailed (*s*). "That this distinction," said Cockburn, C.J., "is of a substantial character and necessary to be attended to is apparent from the fact that the Legislature in two recent Acts, both having reference to the liability of shipowners in respect to 'injury' and 'damage,' has in a series of sections carefully observed this distinctive phraseology, speaking in distinct terms in the same section of loss of life and personal injury on the one hand, and loss and damage done to ships, goods, or other property on the other. In those Acts the term 'damage' is nowhere used as applicable to injury done to the person, but is applied only to property and inanimate things, and we see no reason to suppose that the Legislature in using the term in the enactments we are considering had lost sight of the distinction uniformly observed in the preceding statutes."]

Legislature assumed to remember its own distinctions.

(*q*) [Although this judgment was overruled by the House of Lords in *Copland v. Davies* (1872), L. R. 5 H. L. 358, 397, this particular argument was not questioned.]

(*r*) *Id.* p. 170.

(*s*) The *dicta* of Baggeallay, L.J., in *The Franconia* (1877), 2 P. D. 174, as to *Smith v. Brown* seem to have been disapproved in *Seward v. Vera Cruz* (1884), 10 App. Cas. 59.

Construction  
in accordance  
with public  
policy.

4. If there is a general tendency of decision, whether at common law or under statute, towards a particular legal result, it may fairly be said to be the policy of the law to effect that result. In construing statutes, however, the policy of the law can only be taken into account when the statute under consideration is not explicit. To adopt any other method of construction would be to impose upon the subject the political, moral, social, or religious views of the judges, instead of construing and ascertaining the definite intention of the Legislature.

It has, however, been sometimes said that a statute may be construed in accordance with public policy.

[It was argued by Serjeant Stephen in *Hine v. Reynolds* (1840), 2 Scott, N. R. 419, that "it is a sound general principle in the exposition of statutes that less regard is to be paid to the words that are used than to the policy which dictates the Act"; and in *R. v. Hipswell* (1828), 8 B. & C. 466, 471, Bayley, J., held that the word "void," as used in 28 Geo. 3, c. 48, s. 4, "should receive its full force and effect," because it had been introduced into the statute "for public purposes." The cases, however, cited by Serjeant Stephen in support of his proposition do not bear it out, and on several occasions this principle of construction has been called in question. In *R. v. St. Gregory* (1834), 2 A. & E. 99, 107, Taunton, J., said, with regard to the dictum of Bayley, J., in *R. v. Hipswell*: "In that case the judgment was rested partly on the consideration of public policy, a very questionable and unsatisfactory ground, because men's minds differ much on the nature and extent of public policy" (t).]

If public policy is taken as meaning general considerations of State or of opinion apart from the statute under discussion, the existence of the rule is open to serious question, and its application is difficult, if not mischievous.

If the term merely indicates the policy (u) of the Legislature as indicated in the statute or group of statutes under consideration, it is merely an alternative expression to "the intention," "the evil" or "the mischief" (v) of the statute.

Objections to  
the rule.

Many judges have pointed out the dangers of resorting to considerations of public policy in the first sense as an aid to the construction of contracts in terms which are equally applicable to statutes. In *Hardy v. Fothergill* (1888), 13 App. Cas. 351, 358, Lord Selborne thus stated the proper course to be adopted: "It is not, I conceive, for your lordships or for any other Court

(t) For a discussion of what is public policy, see *Consumers' Cordage Co. v. Connolly* (1901), 31 Canada S. C. 244; and see *Fabacher v. Brown* (1894), 46 Louisiana Ann. 820.

(u) For discussion of the policy of a colonial Act, see *Alison v. Burns* (1889), 15 App. Cas. 44.

(v) "It is a settled principle that the Court should so construe an Act of Parliament as to apply the statutory remedy to the evil or mischief which it is the intention of the statute to meet": *Glasgow v. Hillhead* (1885), 12 Rettie (Sc.) 872, Lord Shand.

to decide such questions as this under the influence of considerations of policy, except so far as that policy may be apparent from, or at least consistent with, the language of the Legislature in the statute or statutes upon which the question depends" (x). "Public policy," said Burroughs, J., in *Fauntleroy's case* (y), "is a restive horse, and when you get astride of it, there is no knowing where it will carry you" (z). The question arose in *Re Mirams*, (1891) 1 Q. B. 594, whether a charge given by a bankrupt on his salary as chaplain of the Birmingham workhouse was void on the ground of public policy. Cave, J., said (at p. 595): "As we all know, certain kinds of contracts have been held void at common law on this ground—a branch of the law, however, which certainly should not be extended, as judges are more to be trusted as interpreters of the law than as expounders of what is called public policy" (a). And rules which rest on the foundation of public policy, not being rules which belong to the fixed or customary law, are capable on proper occasions of expansion or modification (b). "Many transactions are upheld now by our own Courts which a former generation would have avoided as contrary to the supposed policy of the law. The rule remains, but its application varies with the principles which for the time being guide public opinion" (c). And in dealing with a statute, it must be remembered that the statute itself may be evidence of public policy, and is not to be invalidated or defeated by considerations based on a notion of public policy which its enactments may have been intended to override. So that public policy appears to be available only as a ground for holding a will or contract void (d), and not to be of any appreciable value in the construction of a statute. No need arises for its invocation except in case of uncertainty as to the existence of a positive and definite rule of law, for where a statute is clearly contrary to a rule of the common law, the latter must give way.

5. Words of limitation are not to be read into a statute if it Limitation of meaning.

(x) This proposition has been accepted in Australia: *Tasmania v. Commonwealth* (1904), 1 Australia C. L. R. 329, 349, Barton, J. The learned judge proceeded to interpret the policy of the Constitution Act by reference to its history, saying: "The intention of an instrument is to be gathered from the obvious facts of its history—if we at all go outside the four corners of the instrument itself and the policy logically to be deduced from its express words."

(y) *Amicable Society v. Bolland* (1830), 4 Bligh, N. S. 194; 2 Dow & Cl. 1.

(z) Approved by Lord Bramwell in *Mogul Co. v. McGregor*, (1892) A. C. 45. See *Cleaver v. Mutual Reserve Fund*, (1892) 1 Q. B. 147.

(a) See *Parsons v. Brand* (1890), 25 Q. B. D. 110, as to the views of the Court of Appeal on the provisions of the Bills of Sale Acts.

(b) Per Bowen, L.J., in *Maxim-Nordenfeldt Co. v. Nordenfeldt*, (1893) 1 Ch. 630, 665; approved in H. L., (1894) A. C. 535.

(c) *Evanturel v. Evanturel* (1874), L. R. 6 P. C. 1, 29.

(d) See *Ram Coomar v. Chunder Canto* (1876), 2 App. Cas. 186, 210, P. C., per Sir Montagu Smith (chamPERTY); *Collins v. Locke* (1879), 4 App. Cas. 674, 686; Pollock on Contracts (7th ed.), pp. 312 *et seq.*; *Ex parte Huggins*, 21 Ch. D. 85.

can be avoided. This cardinal point is thus stated by Bowen, L.J., in *R. v. Liverpool Justices* (1883), 11 Q. B. D. 638, 649: "One objection which, to my mind, is almost conclusive against it [the decision in *Ex parte Todd* (1878), 3 Q. B. D. 407] is this, that so to construe the section [s. 14 of 9 Geo. 4, c. 61] is reading into it words which limit its *prima facie* operation, and make it something different from, and smaller than, what its terms express. Now, certainly we should not readily acquiesce in a non-natural construction which limits the operation of the section so as to make the remedy given by it not commensurate with the mischief which it was intended to cure."

How to ascertain need of limitation.

But in some cases a limitation may be put on the construction of the wide terms of a statute. Lord Herschell said in *Cox v. Hakes* (1890), 15 App. Cas. 506, 529: "It cannot, I think, be denied that, for the purpose of construing any enactment, it is right to look, not only at the provision immediately under construction, but at any others found in connection with it which may throw light upon it, and afford an indication that general words employed in it were not intended to be applied without some limitation" (e).

And a similar canon has been laid down in the Privy Council in *Blackwood v. R.* (1882), 8 App. Cas. 82, 94: "One of the safest guides to the construction of sweeping general words which it is difficult to apply in their full literal sense is to examine other words of like import in the same instrument, and to see what limitations must be imposed on them. If it is found that a number of such expressions have to be subjected to limitations or qualifications, and that such limitations or qualifications are of the same nature, that forms a strong argument for subjecting the expression in dispute to a like limitation or qualification."

The point raised in the case was whether in the colonial Act "personal estate" subject to duty under the Act did or did not include personalty situate outside the limits of the colony, which a colonial probate did not give title to administer.

This question might have been solved by reference to the constitutional rule that a colony cannot legislate in respect of anything outside its local limits, but it is the settled policy of the Privy Council not to decide that colonial Acts are *ultra vires* if it can avoid that conclusion, but rather to read wide general words as subject to some limitation in the same way as terms in English Acts sometimes receive limitation to avoid what is assumed to have been an undesigned conflict with international law (f).

In *Burge v. Ashley & Smith, Ltd.*, (1900) 1 Q. B. 744, the words "money paid" in the Gaming Act, 1892 (55 & 56 Vict.

(e) And see also the speech of Lord Bramwell in that case (p. 522), and Maxwell on Statutes (p. 242), therein cited (p. 528).

(f) See *Macleod v. Att.-Gen. for New South Wales*, (1891) A. C. 455, 458.

c. 9), were held not to include money deposited by way of stakes on a wager. Collins, L.J., said at p. 750: "I agree that the words looked at by themselves might cover the case. But I think we have to consider something more than the mere words. The Act was passed, after a long chain of authorities, establishing that a sum deposited, as in the present case, might be recovered. If it had been intended to alter the law as established by these decisions, I should have expected to find a clear expression of that intention, which I do not find in this Act." And he came to the conclusion that the words "money paid" had been used to meet cases like *Read v. Anderson* (1884), 13 Q. B. D. 779, and not cases like *Trimble v. Hill* (1879), 5 App. Cas. 342.

"As a matter of ordinary construction," said Lord Bramwell in *Great Western Rail. Co. v. Swindon, &c. Rail. Co.* (1884), 9 App. Cas. at p. 808, "where several words are followed by a general expression which is as much applicable to the first and other words as to the last, that expression is not limited to the last, but applies to all (*g*). For instance, 'horses, oxen, pigs, and sheep, from whatever country they may come'—the latter words would apply to horses as much as to sheep" (*h*). But, speaking generally, there must be some kind of limitation to the meaning of general words in a statute. [Lord Bacon's maxim on this subject is, "*Verba generalia restringuntur ad habilitatem rei vel personæ*" (*i*). This rule of law, generally known as the *ejusdem generis* rule, or the rule *noscitur a sociis*, was thus enunciated by Lord Campbell in *R. v. Edmundson* (1859), 28 L. J. M. C. 213, 215: "I accede," said he, "to the principle laid down in all the cases which have been cited, that, where there are general words following particular and specific words,

General words limited by the *ejusdem generis* rule.

(*g*) The rule is well stated in a New Zealand case, *Cooney v. Covell* (1901), 21 N. Z. L. R. 106, by Williams, J., in the following terms: "There is a very well known rule of construction that if a general word follows a particular and specific word of the same nature as itself, it takes its meaning from that word, and is presumed to be restricted to the same genus as that word. No doubt that rule is one to be followed with care; but if not to follow it leads to absurd results, then I am of opinion that it ought to be followed." The question in the case was whether the words "any other publications" in s. 56 of the 56 Vict. No. 42 (*for suppressing offensive publications*) applied to a pamphlet sold only as an *aid* to *medical work*.

(*h*) In *Fletcher v. Lord Sondes* (1826), 3 Bing. 501 (H. L.), at p. 580, Best, C.J., said: "By 14 Geo. 2, c. 1, persons who should steal sheep or any other cattle were deprived of the benefit of clergy, but until the Legislature distinctly specified what cattle were meant to be included, <sup>the words 'any other cattle' they could not apply the statute to any other cattle but</sup> *v. Kempton Park Racecourse Co.*, (1899) A. C. 143, the majority of the law lords held that the *ejusdem generis* rule applied to the words "or other place" which follow the words "house, office, room" in sect. 1 of the Betting Act, 1853 (16 & 17 Vict. c. 119), and so applied it as to exclude the Tattersall's Ring on a racecourse from the operation of the Act.

(*i*) [See Lord Bacon's Works (ed. Spedding), vol. vii. p. 356. This maxim is frequently cited in Courts of law; e.g. *Gunnestad v. Price* (1874), L. R. 10 Ex. 69; *Washer v. Elliott* (1876), 1 C. P. D. 174.] It is a very necessary rule for a draftsman to keep in mind: Thring, *Practical Legislation* (ed. 1902), 83; Ilbert, *Legislative Methods and Forms*, 250.

the general words must be confined to things of the same kind as those specified." Thus, in *Scales v. Pickering* (1828), 4 Bing. 448, the question was what was the meaning of the word "footway" when used in a private Act which empowered a water company to "break up the soil and pavement of roads, highways, *footways*, commons, streets, lanes, alleys, passages, and public places," provided they did not enter upon any private lands without the consent of the owner. It was contended that this authorised the company to break up the soil of a private field in which there was a public footway, but it was held otherwise. "Construing the word 'footway,'" said Best, C.J., "from the company in which it is found, the Legislature appears to have meant those paved footways in large towns which are too narrow to admit of horses and carriages." And Park, J., added: "The word 'footway' here *noscitur a sociis*." In *Shaw v. Ruddin* (1858), 9 Ir. C. L. R. 214, the question was whether 16 & 17 Vict. c. 112, s. 25, which enacted that "it shall not be lawful for any person to use or let to hire any hackney carriage, job carriage, stage carriage, *cart*, or job horse, at any place within the limits of this Act," without having a licence for the same, applied to carts used for private purposes only. It was held that it did not. "In the interpretation of this Act," said Lefroy, C.J., "we have to aid us the long-established rule of construction—namely, that we must look to the associate terms in connection with which we find the word 'carts.' We find, then, that in the several sections in which that word occurs, it is associated with carriages and vehicles none other than those let or used for hire." In accordance with this rule, it was held in *R. v. Payne* (1866), L. R. 1 C. C. R. 27, that a crowbar was included under the words "any other article or thing" as used in the Prison Act, 1865, s. 37, which makes it indictable to convey into a prison, with intent to facilitate the escape of a prisoner, "any mask, dress, or other disguise, or any letter, or any other article or thing." In *Re Stockport, &c. Schools*, (1898) 2 Ch. 687, the Court of Appeal read the words "or other schools" in s. 62 of the Charitable Trusts Act, 1853, as applying not to all schools of whatever description, but only to schools similar in character to the "cathedral, collegiate (or) chapter schools" mentioned in the section. Lindley, M.R., said (p. 696): "I cannot conceive why the Legislature should have taken the trouble to specify in this section such special schools as cathedral, collegiate and chapter, except to show the type of school which they were referring to, and in my opinion other schools must be taken to mean other schools of that type." [In *Ashbury Carriage Co. v. Riche* (1875), L. R. 7 H. L. 653, a question arose as to the meaning of the words "general contractors." It appeared that the memorandum of association of the company stated that the company was formed for the purpose (among others) "of

28 & 29 Vict.  
c. 126.

16 & 17 Vict.  
c. 137.



carrying on the business of mechanical engineers and *general contractors*." "Upon all ordinary principles of construction," said Lord Cairns, "these words must be referred to the part of the sentence which immediately precedes them . . . therefore . . . the term 'general contractors' would be referred to that which goes immediately before, and would indicate the making generally of contracts connected with the business of mechanical engineers. . . . If these words were not to be interpreted as I have suggested, the consequence would be that they would stand absolutely without any limit of any kind . . . and would authorise the making of contracts of any and every description, and the memorandum of association, in place of specifying a particular kind of business, would virtually point to the carrying on of business of any kind whatever, and would therefore be altogether unmeaning." But the *ejusdem generis* rule is one to be applied with caution and not pushed too far, as is the case in many decisions which treat it as automatically applicable, and not as being, what it is, a mere presumption, in the absence of other indications of the intention of the Legislature (*k*); and where the words are clearly wide in their meaning they ought not to be qualified on the ground of their association with other words (*l*).

[In accordance with this principle of construction, it has always been held that general words following particular words will not include anything of a class superior to that to which the particular words belong. This was pointed out by Lord Coke in *Archbishop of Canterbury's case* (1596), 2 Co. Rep. 46 *a*. He there says, as to 31 Hen. 8, c. 13, which discharged from payment of tithes all lands which came to the Crown by dissolution, renouncing, relinquishing, forfeiture, giving up, or by *any other means*, that this statute only discharged from tithes lands which came to the Crown by these or by any other *inferior* means, but did not discharge from tithe land which came to the Crown by virtue of an Act of Parliament, "which is the highest manner of conveyance that can be." So also in 2 Inst. 457, Lord Coke, in commenting upon the Stat. West. 2, c. 41 (13 Edw. 1), said: "Seeing this Act beginneth with abbots and concludeth with other religious houses, bishops are not comprehended within this Act, for they are superior to abbots, and these words [other religious houses] shall extend to houses inferior to them that were mentioned before." Thus, in *Casher v. Holmes* (1831), 2 B. & Ad. 592, it was held that the general words "all other metals" following the particular words "copper, brass, pewter, and tin," in the local Act of 6 Geo. 4, c. clxx., did not include silver or gold, those latter metals being

General words will not include anything of a class superior to the particular words they follow.

(*k*) *Anderson v. Anderson*, (1895) 1 Q. B. 749.

(*l*) *Glasgow Corporation v. Glasgow Tramway Co.*, (1898) A. C. 631, 634, Halsbury, L. C.

Meaning of  
general words  
not following  
particular  
words, how  
limited.

of a superior kind to the particular metals mentioned in the Act.]

[The question whether, when the Legislature has used general words in a statute, not following particular or specific words, those words are to receive any (and, if so, what) limitation, is one which may sometimes be answered by considering whether the intention of the Legislature on this point can be gathered from other parts of the statute.] “It is a sound maxim of law,” said the Judicial Committee in *Att.-Gen. for Ontario v. Mercer* (1883), 8 App. Cas. 767, 778, “that every word (in a statute) ought *primâ facie* to be construed in its primary and natural sense, unless a secondary or more limited sense is required by the subject or the context.” [This was held in *Hawkins v. Gathercole* (1855), 24 L. J. Ch. 322, on the construction of 1 & 2 Vict. c. 110, where it was held that the word “tithes” in the Act must be confined to lay tithes. This doctrine is clear from a long list of authorities which appear all to be founded on the case of *Stradling v. Morgan* (1560), Plowd. 204 (*m*), where it is said as follows:—“The judges of the law, in all times past, have so far pursued the intent of the makers of statutes, that they have expounded Acts which are general in words to be but particular where the intent was particular. . . . The sages of the law heretofore have construed statutes quite contrary to the letter in some appearance, and those statutes which comprehend all things in the letter they have expounded to extend but to some things, and those which generally prohibit all people from doing such an act they have interpreted to permit some people to do it, and those which include every person in the letter they have adjudged to reach to some persons only, which expositions have always been founded upon the intent of the Legislature, which they have collected, sometimes by considering the cause and necessity of making the Act, sometimes by comparing one part of the Act with another, and sometimes by foreign circumstances, so that they have ever been guided by the intent of the Legislature, which they have always taken according to the necessity of the matter, and according to that which is consonant to reason and good discretion.” This rule is well illustrated by the decision arrived at in *The Douse* (1870), L. R. 3 Ad. & E. 135, with regard to sect. 3 of the County Courts Admiralty Jurisdiction Act, 1868 (31 & 32 Vict. c. 71), which gives certain county courts jurisdiction as to “any claim for . . . necessities. . . .” It was argued that the words “any claim” ought not in any way to be limited, and that although the High Court of Admiralty would have no jurisdiction in the particular matter in question, still, that it was intended by this Act to give county courts jurisdiction as to all claims for necessities,

(*m*) Cited and approved in *Cox v. Hakes* (1890), 15 App. Cas. 506, 516, and *Re Standard Manufacturing Co.*, (1891) 1 Ch. 627, 646, Bowen, L.J.

whether the High Court of Admiralty had jurisdiction over such claims or not. But the Court held that the words used in the Act would be satisfied if the county court jurisdiction was confined to cases where the High Court of Admiralty would have jurisdiction.]

[Although it often happens that the words used in a statute are, as Coleridge, J., observed in *Clayton v. Fenwick* (1856), 6 E. & B. 131, "so general that they must receive some limitation," it is difficult, as the following cases will show, to lay down any general rule for arriving at the intention of the Legislature as to the precise limitation which must be put upon the meaning of general words used in a statute. In *Cargo ex Argos* (1872), L. R. 5 P. C. 134, 145, a similar question arose to that decided in *The Dorse* (*n*), namely, what, if any, limitation was to be put upon the meaning of the words "any claim," as used in sect. 2 of the County Courts (Admiralty Jurisdiction) Act, 1869, and although in *The Dorse* those words, as used in a statute *in pari materia* with this Act, were held to be used in a limited sense, the Court overruled a case in which a limitation had been put upon their meaning, and declined in this case to put any limitation whatever upon them. So also in *Daputo v. Wyllie* (1874), L. R. 5 P. C. 482, the same Court declined to limit the meaning of the words "carried into," and, following the decision of Dr. Lushington in *The Bahia* (1863), Br. & Lush. 61, they held that the words were advisedly used instead of "imported," in order to give to the Court the utmost jurisdiction. So in *Duke of Newcastle v. Morris* (1870), L. R. 4 H. L. 661, it was held that the words "all debtors" as used in the Bankruptcy Act, 1861, s. 69, included persons of every description, and that peers could not claim exemption from the operation of the Act on the ground that they had the privilege of Parliament. But, on the other hand, it was held in *Lord Colchester v. Kewney* (1866), L. R. 1 Ex. 368, 380, that the 38 Geo. 3, c. 5, s. 25, which exempted "any hospital" from land tax, only applied to hospitals existing at the time the Act was passed. So also in *Beckford v. Wade* (1805), 17 Ves. 92, Sir W. Grant pointed out that the Legislature evidently considered that the general words of 32 Hen. 8, c. 1, which declared that "all and every person or persons" may devise their lands by will, would enable infants or insane persons to devise by will, because they subsequently passed 34 Hen. 8, c. 5, expressly to prohibit this. So in *O'Shanassy v. Joachim* (1875), 1 App. Cas. 82, 90, it was held that the word "person" (*o*) in a colonial Act was not necessarily restricted to persons above twenty-one, but might include infants, especially as the Act enlarged the power which infants previously had before the passing of the Act.

Difficulty of laying down general rule.

32 & 33 Vict. c. 51.

24 & 25 Vict. c. 134.

(*n*) (1870), L. R. 3 Ad. & E. 135, cited *ante*, p. 170.

(*o*) As to what the word "person" will or will not include, *vide ante*, p. 149, and Appendix A., s. v. "Person."

In *R. v. White* (1867), L. R. 2 Q. B. 563, it was held that the words "or otherwise incapable of acting," following the words "dead or absent," were not to be confined merely to physical incapacity analogous to death or absence, but applied to any kind of incapacity, whatever might be the cause.] In *Morant v. Taylor* (1876), 1 Ex. D. 188, it was held that the words "order for the payment of money or otherwise," used in sect. 1 of the Summary Jurisdiction Act, 1848 (11 & 12 Vict. c. 43), included orders of every kind, and that the *ejusdem generis* rule did not apply. But this decision was overruled by *R. v. Edwards* (1884), 13 Q. B. D. 586.

General words in statute apply only to persons or things, not to foreign persons or things.

[*"Prima facie,"* said Lord Cranworth in *Jefferys v. Boosey* (1854), 4 H. L. C. 815, 955, "the Legislature of this country must be taken to make laws for its own subjects exclusively" (*p*).] Another way of stating this principle is that all jurisdiction is properly territorial, and that the Courts will as a general rule presume that Parliament did not intend to interfere with international usage on this subject (*q*), or to legislate for foreigners not within British territory. In *A. B. & Co.*, (1900) 1 Q. B. 541, 544, Lindley, M.R., in dealing with the question whether a foreigner resident abroad could be made bankrupt in England, said: "What authority or right has the Court to alter in this way the status of foreigners who are not subject to our jurisdiction? If Parliament had conferred this power in express words, then of course the Court would be bound to exercise it. But the decisions go to this extent, and rightly, I think, in principle, that unless Parliament has conferred on the Court that power in language which is unmistakable, the Court is not to assume that Parliament intended to do that which might seriously affect foreigners who are not resident here, and might give offence to foreign Governments (*r*). Unless Parliament has used such plain terms as to show that they really intended us to do that, we ought not to do it. That is the principle which underlies the decisions in *Ex parte Blain* (*s*) and *Ex parte Pearson* (*t*). Nothing can be plainer than the language of James, L.J., in *Ex parte Blain*, and the language of Cotton, L.J., is to the same effect" (*u*).

(*p*) [Cf. *Cope v. Doherty* (1858), 27 L. J. Ch. 609, Turner, L.J.]

(*q*) *Sirdar Gurdial Singh v. Rajah of Faridkote*, (1894) A. C. 670, 683, Earl of Selborne.

(*r*) This decision was affirmed, (1901) A. C. 102. [Cf. *R. v. Keyn* (1876), 2 Ex. 63, 210, Cockburn, C.J.]

(*s*) (1879), 12 Ch. D. 522.

(*t*) (1892) 2 Q. B. 263. See also *Colquhoun v. Haddon* (1890), 25 Q. B. D. 135, Esher, M.R.

(*u*) (1879), 12 Ch. D. 533, where Cotton, L.J., said that "we must not give to general words an interpretation which would violate the principles of law admitted and recognised in all countries." [This is in accordance with what was said by Sir W. Scott in *Le Louis* (1826), 2 Dods. 210, 239: "No British Act of Parliament can affect any right or interest of foreigners unless it imposes regulations consistent with the law of nations . . . and the generality of any terms employed in an Act of Parliament must be narrowed in construction by a

[In *Thomson v. Att.-Gen.* (1845), 12 Cl. & F. 1, the question arose whether, under 55 Geo. 3, c. 184, sch. pt. 3 (rep.), which enacted that duty should be payable upon "every legacy . . . given by any will or testamentary instrument of any person," legacy duty was payable upon legacies bequeathed by a testator who died domiciled abroad, and it was decided that the word "person" did not apply to such a case. "The very general words of the statute," said Tindal, C.J., in delivering the opinion of the judges, "must of necessity receive some limitation in their application, for they cannot in reason extend to every person everywhere, whether subjects of this kingdom or foreigners, and whether, at the time of their death, domiciled within the realm or abroad. We think such necessary limitation is that the statute does not extend to the will of any person who at his death was domiciled out of Great Britain" (x). So in *Jefferys v. Boosey* (1854), 4 H. L. C. 815, it was held that the word "author" as used in 8 Anne, c. 21 (c. 19, Ruffhead), which enacts that "the author of any book shall have the sole liberty of printing such for fourteen years," referred to British authors only, and not to authors of other nationalities (y);] and in *R. v. Blane* (1843), 13 Q. B. 769, it was held that the word "bastard" in 7 & 8 Vict. c. 101, means a bastard born in this country (z).

[Again, it is a rule as to the limitation of the meaning of general words used in a statute, that they are to be, if possible, construed so as not to alter the common law. "The general rule in exposition," said the Court of Common Pleas in *Arthur v. Bokenham* (1708), 11 Mod. 150, "is this, that in all doubtful matters, and where the expression is in general terms, the words are to receive such a construction as may be agreeable to the rules of common law in cases of that nature, for statutes are not presumed to make any alteration in the common law further or otherwise than the Act does expressly declare." Again, in *Minet v. Leman* (1855), 20 Beav. 278, Romilly, M.R., said:

Meaning of general words to be limited so as not to alter the common law.

religious adherence thereto." But this doctrine is too widely stated, in so far as it attempts to put any fetter on the supreme power of the Legislature. *Vide infra*, Part II. ch. viii., "Territorial Effect of Statutes."

(x) [See *Wallace v. Att.-Gen.* (1865), 1 Ch. App. 1, where it was decided on similar grounds that succession duty is not payable upon personality in England devised by a person domiciled in a foreign country.] *Att.-Gen. v. Campbell* (1872), L. R. 5 H. L. 521, and *Sinms v. Registrar of Probates*, (1900) A. C. 323. And see Dicey, *Conflict of Laws*, p. 781.

(y) [But the decision of the House of Lords in *Routledge v. Low* (1868), L. R. 3 H. L. 100, as to the meaning of the word "author" as used in 5 & 6 Vict. c. 45, somewhat qualifies their previous decision in *Jefferys v. Boosey*. See this question further discussed under "Territorial Effect of Statutes," *infra*, Part II. ch. viii.]

(z) The case of *Niboyet v. Niboyet* (1878), 4 P. D. 1, as to the meaning of "husband" in the Matrimonial Causes Act, 1857 (20 & 21 Vict. c. 85), s. 27, must be read subject to the decisions in *Le Mesurier v. Le Mesurier*, (1895) A. C. 517; *Arnytage v. Arnytage*, (1898) P. 178. See Dicey, *Conflict of Laws*, p. 275.

"The general words of an Act are not to be so construed as to alter the previous policy of the law, unless no sense or meaning can be applied to those words consistently with the intention of preserving the existing policy untouched. This principle of construction as a general proposition cannot be disputed" (a).] A right to demand a poll is a common law incident of all popular elections (b), and, as such, "cannot be taken away by mere implication which is not necessary for the reasonable construction of a statute," said Brett, L.J., in *R. v. Wimbledon L. B.* (1882), 8 Q. B. D. 459 (c), where it was contended that the Public Libraries Acts, 1855, 1866, and 1877, had abolished the common law rule. [In *Hawkins v. Gathercole* (1855), 24 L. J. Ch. 334, the question was what meaning was to be attached to the words "rectories and tithes" in 1 & 2 Vict. c. 110, s. 13, which enacted that "a judgment already entered up shall operate as a charge upon all lands, tenements, rectories, advowsons, tithes. . . ." On the part of the plaintiff it was contended that the words extended to all rectories and tithes, both lay and ecclesiastical, and that consequently a charge which he had upon the tithes receivable by the defendant as rector of a parish was a valid one. For the defendant it was contended that the statute 13 Eliz. c. 20, s. 1, which was merely declaratory of the common law on the subject, and enacted that "all chargings of benefices with cure . . . shall be utterly void," rendered the plaintiff's charge invalid, and that the words "rectories and tithes" only applied to lay rectories and tithes. The Court of Appeal decided in favour of the defendant; and Turner, L.J., in giving judgment, said: "It is one of the privileges of the clergy, secured to them by Magna Charta, that distresses shall not be taken by sheriffs in the inheritance of the church wherewith it was anciently endowed. . . . These privileges remained intact down to the time of the passing of this Act, and looking to the cases referred to, I am very much disposed to think that the general words used in this section ought not in any event to be held to have abrogated these privileges, there being ample room for them to operate otherwise." Another decision which illustrates this principle is that of *R. v. Harrald* (1872), L. R. 7 Q. B. 361 (d). In that case it was contended that 32 & 33 Vict. c. 55, s. 9,

(a) In *Nolan v. Clifford* (1904), 1 Australia C. L. R. 429, 444, Griffith, C.J., said: "It is always necessary, in dealing with any law that alters the common law, and especially where the common law rights of the liberty of the subject or relating to property are concerned, to consider what was the previous law and what were the apparent reasons for the alteration made, and then to see what were the reasons for altering the law, and what the Legislature has done to remedy what it conceived to be defects in the law."

(b) *Anthony v. Seger* (1789), 1 Hagg. Consistory Rep. 13 (Stowell); *Campbell v. Maund* (1836), 5 A. & E. 865 (Ex. Ch.); *R. v. Bishop of Salisbury*, (1901) 1 K. B. 573, 579; 2 K. B. 225.

(c) See *R. v. Bethnal Green Vestry* (1875), 32 L. T. N. S. 558.

(d) See *Beresford-Hope v. Lady Sandhurst* (1889), 23 Q. B. D. 79, and *ante*, p. 112.

which enacts that "whenever words occur which import the masculine gender, the same shall be held to include females for all purposes connected with the right to vote at elections," enfranchised not only single, but also married women. But it was held that it did not. "Marriage," said Mellor, J., "is at common law a total disqualification, and a married woman therefore could not vote, her existence for such a purpose being merged in that of her husband." The 32 & 33 Vict. c. 55, was passed because, as Cockburn, C.J., observed, "it was thought to be a hardship that when women bore their share of the public burthens in respect of the occupation of property, they should not also share the rights to the municipal franchise and be represented; and it was thought that unmarried women ought to be allowed to exercise these rights. . . . But it seems quite clear that this statute had not married women in its contemplation."]

## CHAPTER VI.

EFFECT OF ONE PART OF A STATUTE UPON THE  
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Division of  
statute into  
parts.

[An Act of Parliament at the present day (a) consists of the following parts, viz. :—

1. The day of its receiving the royal assent.

(a) As to when the present form of statute was first adopted, see May, Parl. Fract. (10th ed.), p. 433; *ante*, p. 18.



2. The title.
3. Marginal notes and punctuation.
4. The preamble.
5. Headings.
6. The interpretation clauses.
7. The enacting clauses.
8. The schedules.

It is, of course, often the case that an Act of Parliament consists merely of one or more enacting clauses, and has no headings, interpretation clause, schedules, or even preamble.]

1. The date on which an Act receives the Royal assent is made part of the Act by 33 Geo. 3, c. 13 (*b*). Royal assent.

2. It is said by Treby, C.J., in *Chance v. Adams*, Hard. 325, Fall title, that "no titles at all were put in statutes until 11 Hen. 7 (1495)" (*c*). ["In the fifth year of Henry VIII. it first became the custom to put a distinct title to every particular chapter of a statute. The subdivision of statutes into chapters must be understood to have been perfectly arbitrary. The same may be predicated of the titles prefixed to the chapters, which have often been the mere invention of modern editors" (*d*). In *Birtwhistle v. Vardill* (1840), 7 Cl. & F. 895, 929, Tindal, C.J., said, with reference to ancient statutes: "No more argument can be justly built upon the title prefixed to the statute in some of the modern editions of the statutes than upon the marginal notes against its different sections."]

[In *Claydon v. Green* (1868), L. R. 3 C. P. 511, 522, Willes, J., after explaining how Bills were formerly engrossed upon one or more Rolls of Parliament, a practice discontinued since 1849 (*e*), said: "I desire to record my conviction that this change in the mode of recording them cannot affect the rule which treated the title of the Act, the marginal notes, and the punctuation, not as forming part of the Act, but merely as a *contemporanea expositio*. The Act when passed must be looked to just as if it were still entered upon a roll, which it may be again if Parliament should be pleased so to order, in which case it would be without these appendages, which, though useful as a guide to a hasty inquirer, ought not to be relied upon in construing an Act of Parliament."]

This decision of Willes, J., is in accord with a series of earlier decisions (*f*). It does not wholly exclude reference to the long

(*b*) See this discussed in the chapter on "Commencement and Duration of Effect of Statutes," Part II. ch. vi.

(*c*) *Birtwhistle v. Vardill* (1840), 7 Cl. & F. 895, 945, Lord Brougham; and see Bacon, Abr. tit. Statute A; but see 3 Hen. 7, 1 Rev. Stat. (2nd ed.) 228.

(*d*) [Dwarris on Statutes (2nd ed.), p. 462; 1 Bl. Comm. 183.]

(*e*) Bills as soon as passed are now printed on vellum by the King's printer: May, Parl. Pract. (10th ed.) p. 471.

(*f*) In *Poulter's case* (1611), 11 Co. Rep. 33, Lord Coke said: "As to the style or title of the Act, that is no parcel of the Act, and ancient statutes are without any title; and many Acts are of greater extent than the titles are." In *Att.-Gen. v. Lord Weymouth* (1743), Ambler, 22, Lord Hardwicke said: "The

title; but other judges have differed from him as to the extent to which the long title may be used as a guide to construction. [In *Brett v. Brett* (1826), 3 Addams, 210, the question was whether the expression "any will or codicil," when used in 25 Geo. 2, c. 6, related to all wills and codicils, or only to those of real estate. The title of that Act is "An Act for putting an end to certain doubts relating to the attestation of wills and codicils of real estate," and Sir John Nicholl held that the title might be taken into consideration in deciding the question raised, and that since the Act professed by its title to relate only to wills and codicils of real estate, it must be held to be confined to such, and not to affect wills or codicils of personal estate. "If that had been the true construction," said he, "the title of the Act should at least, not to say must, have been different. But the title of an Act of Parliament is settled with some solemnity (g); and this, too, after it becomes an Act—that is, after the question put, whether the Bill shall pass, and that question carried in the affirmative. This seems to imply that, in whatever sense the phrase was understood by the framer of the Bill, the sense in which it was understood by the Legislature, and in which the Court consequently is bound to construe it, is that of a will or codicil of real estate" only. The two following cases are good examples of the way in which the title of an Act is allowed to operate upon its construction. In *Shaw v. Ruddin* (1859), 9 Ir. C. L. R. 214, the question was whether 16 & 17 Vict. c. 112, s. 25, which imposes a penalty upon persons using or letting to hire at any place within the police district of Dublin any . . . cart . . . without having a licence for the same, applies to carts used for private purposes only. The title of the Act was "An Act to consolidate and amend the laws relating to hackney and stage carriages, also job carriages and horses and carts let for hire within the police district of Dublin." Lefroy, C.J., said in his judgment: "Now, the title of the Act shows that the Legislature intended to make regulations with respect to carriages and other vehicles let for hire. It is quite true that, although the title of an Act cannot be made use of to control the express provisions of the Act, yet if there be in these provisions anything admitting of a doubt, the title of the Act is a matter proper to be considered, in order to assist in the interpretation of the Act, and thereby to give to the doubtful language in the body of the Act a meaning consistent rather than at variance with the clear title of the Act." In *Ex parte Stearnson* (1823), 2 B. & C. 34, a *quo warranto* was moved for against certain municipal officers, who, having been elected

title is no part of the Act." See also *Mills v. Wilkins* (1704), 6 Mod. 62, Holt, C.J.; *R. v. Williams* (1791), 1 W. Bl. 93, 95; *Hunter v. Nockolds* (1849), 1 Macn. & G. 640, Lord Cottenham; *Coomber v. Berks JJ.* (1882), 9 Q. B. D. 17, 32.

(g) See note (i), *post*, p. 180.

in September, 1822, had neglected to take the oaths of allegiance, &c., as required by the Tests and Corporation Acts, within six months. By the Annual Indemnity Act, 4 Geo. 4, c. 1. which was passed in February, 1823, it was enacted that "all and every person and persons who at or before the passing of this Act hath or shall have omitted to take the oaths within such time as is by the said Act required, and who, on or before March 25, 1824, shall take the said oaths, shall be and are hereby indemnified." It was contended that this Act only applied to persons who, "at or before the passing of the Act," had incurred penalties, and that as these persons were only elected in September, 1822, they had not incurred any penalties by February, 1823, when the Act passed, and consequently could not be protected by it. But on behalf of these persons it was urged that from the title of the Act it was clear that it was the intention of the Legislature that the indemnity should extend to them. And so it was held by the Court, who said: "There may, perhaps, be some obscurity in the words of the statute, but there is none in the title, and this being a remedial statute, we should construe it so as to give full effect to the intention of the Legislature." In *East and West India Docks Co. v. Shaw, Savill & Albion Co.* (1888), 39 Ch. D. 531, Chitty, J., said that the full title might "be referred to for ascertaining generally the scope of the Act"; and in *Kenrick v. Lawrence* (1890), 25 Q. B. D. 99, a case on the Copyright (Works of Art) Act, 1862, which has a statutory short title, Wills, J., referred to the full title to elucidate an ambiguity. He said: "The title of a statute does not go for much in construing it, but I do not know that it is to be absolutely disregarded. The cases on the subject are collected and their effect stated in Master Wilberforce's very careful and able treatise on Statute Law, at pp. 272, 276. The title of Lord Campbell's Act (9 & 10 Vict. c. 93) was certainly referred to as not without significance in the Court of Queen's Bench in *Blake v. Midland Railway Company* (h). As far as it goes, the title would certainly seem to point to the notion that it is the product of the artistic faculty which is the primary thing to be protected. And although it might not be right on that account to cut down the generality of the expression 'every drawing,' yet it may serve to point to the character of the production."

The old opinion that the long title is not part of the statute is no longer adopted, owing to changes in the Parliamentary procedure for dealing with titles. In *Jefferies v. Alexander* (1860), 8 H. L. C. 594, 603, note (h), Lord Cranworth said that though the question as to the title of an Act is put from the chair in the House of Commons, it was never put in the House of Lords. But under the present procedure, in both Houses titles are now

The full title,  
modern view.

(h) (1852), 18 Q. B. 98, 109.

the subject of amendment (*i*). The full title is "always on the roll" (*k*), and may, like the preamble, "be looked at in order to remove any ambiguity in the words of the Act" (*l*). In *Fielden v. Morley Corporation*, (1899) 1 Ch. 1, 3, Lindley, M.R., in construing the Public Authorities Protection Act, 1893, referred to the full title and continued: "I read the title advisedly, because now and for some years past the title of an Act of Parliament has been part of the Act. In old days it used not to be so, and in the old law-books we were told not so to regard it; but now the title is an important part of the Act, and is so treated in both Houses of Parliament" (*m*). In *Att.-Gen. v. Margate Pier and Harbour Co.*, (1900) 1 Ch. 749, Kekewich, J., held that a commercial company having powers and duties under a special Act, was not a public authority within the Public Authorities Protection Act, 1893 (*n*). In *Dartford Rural District Council v. Bexley Heath Rail. Co.*, (1898) App. Cas. 210, 312, the Earl of Halsbury, L.C., to determine the scope of the Railways Clauses Act, 1845, took into consideration not only the preamble but also the title of the statute (*o*). And in *Fenton v. Thorley*, (1903) App. Cas. 443, a case upon the Workmen's Compensation Act, 1897, Lord Macnaghten said: "It has been said that you cannot resort to the title of an Act for the purpose of construing its provisions. Still, as was said by a very sound and careful judge (*p*), the title of an Act is no part of the law (*q*), but it may tend to show the object of the legislation. . . . Surely, if

8 & 9 Vict.  
c. 20.

60 & 61 Vict.  
c. 37.

(*i*) The last question to be determined in the House of Commons is that this be the title of the Bill, which is accordingly read by the Speaker. Amendments may then be offered to the title: May, Parl. Pract. (10th ed.), 473. In the House of Lords the title may be amended at any stage during the progress of a Bill: May, Parl. Pract. (10th ed.), 462, 473; Standing Orders, House of Commons, 1906, Public Business, No. 34; Roscoe, Nisi Prius (17th ed.), 106.

(*k*) *Sutton v. Sutton* (1882), 22 Ch. D. 513, Jessel, M.R.

(*l*) *Coomber v. Berks JJ.* (1882), 9 Q. B. D. 17, 33, Huddleston, B.

(*m*) Followed in *R. v. Cockerton* (1901), 17 Times L. R. 165 (C. A.). Same rule observed in Canada: *O'Connor v. Nova Scotia Telephone Co.*, 22 Canada, 226.

(*n*) In *The Idun*, (1899) P. 236, Jeune, P., erroneously referred to *Fielden's case* (*ubi supra*) as dealing with the "short title" of the Act.

(*o*) [There is one Act of Parliament (31 & 32 Vict. c. 89) in which, unless the title be taken as an integral portion of the Act, the first section will be unintelligible. The title of the Act is "An Act to alter certain provisions in the Acts for the commutations of tithes, the Copyhold Acts, and the Acts for the inclosure, exchange, and improvement of land. . . ." The Act then goes on thus: "Be it enacted, &c., 1. That notwithstanding any provisions in the said Acts contained, &c." This is, of course, the result of an oversight, and is a good illustration of the hasty way in which Acts of Parliament are drawn. Whether it would be held that the first section of this Act is inoperative as being altogether unintelligible according to the ordinary rules for construing statutes remains to be seen, should the question ever be raised; but it is obvious that, unless the title be treated as part of the Act, the first section will have no meaning at all. This Act underwent no alteration whatever during its passage through Parliament. The first print of the Act, which has on the back of it the names of Mr. Gathorne Hardy and Mr. Sclater Booth, may be seen in the Library of the House of Commons.]

(*p*) Wightman, J., in *Johnston v. Upham* (1859), 2 E. & E. 263.

(*q*) This is not the present opinion, *vide supra*, p. 179.

such a reference is ever permitted, it must be permissible in a case like this, where Parliament is making a new departure in the interest of labour, and legislating for working men presumably in language that they can understand."

"Every Act of Parliament," says Lord Thring (Practical Legislation, p. 37), "should have a short title, ending with the date of the year in which it is passed. . . . For although [s. 3 of] Lord Brougham's Act, 13 & 14 Vict. c. 21 (*r*), enables reference to be made to a particular statute without mentioning its title, it is very inexpedient to do so, as the mere mention of a particular chapter fails to convey to the mind of the reader any idea of the Act referred to, and mistakes often arise from a misprint in the number of a chapter"; and this is now the established method of drafting (*s*). Where Acts contain a section enacting that the Act may be cited by some short title, such a section may be cited as proof of the intention of the Legislature, so as "to make that short title a good general description of all that was done by the Act" (*t*). The short titles given by the Short Titles Act, 1896, do not appear to come within this decision, and are merely guides for reference and future drafting. Reference to the long or short titles of a statute for purposes of interpretation must always be secondary to reference to the enacting part, for the title may be colourless (*u*), or the Act may deal with subjects not expressed in the title (*x*). Short titles  
part of an  
Act.  
59 & 60 Vict.  
c. 14.

3. [The marginal notes do not form part of any Act (*y*), are not amended in either House, and it is not usual to allow them to be referred to for the purpose of throwing light upon the meaning of an obscure enactment, and there appear to be few instances in the reports of this being done.] In *R. v. Milverton* (1836), 5 A. & E. 854, it was held that a marginal note to a form in the schedule of 13 Geo. 3, c. 78, "which is not merely found in the printed Act, but in the Parliament Roll," was part of the Act and should receive its full effect. In *Sheffield Waterworks v. Bennett* (1872), L. R. 7 Ex. 409, 421, Cleasby, B., said that "one may refer to the marginal reference in considering the general sense in which words are used in Acts of Parliament." And [in *Venour v. Sellon* (1876), 2 Ch. D. 525, Jessel, M.R., referred to the marginal note of 19 & 20 Vict. c. 120, s. 14, in support of the view which he took of the meaning of the section. "This view," said he, "is borne out by the marginal note, and I may mention that the marginal notes of Acts of Parliament Marginal  
notes.

(*r*) Superseded by sect. 35 of the Interpretation Act, 1889 (52 & 53 Vict. c. 63), *post*, Appendix C.

(*s*) For a list of popular and short titles, see Appendix B.

(*t*) *Middlesex Justices v. R.* (1884), 9 App. Cas. 757, Lord Selborne.

(*u*) *R. v. West Riding County Council* (1906), 22 T. L. R. 783, Farwell, L.J., cited *ante*, p. 120.

(*x*) See *R. v. Washington* (1881), 46 U. C. Q. B. 221, 225, Osler, J.

(*y*) *Claydon v. Green* (1868), L. R. 3 C. P. 511, *ante*, p. 177.

now appear on the Rolls of Parliament, and consequently form part of the Acts, and in fact are so clearly so that I have known them to be the subject of motion and amendment in Parliament" (z)]. But Baggallay, L.J., in *Att.-Gen. v. G. E. Rail. Co.* (1879), 11 Ch. D. 449, 461, said: "I never knew an amendment set down or discussed upon the marginal notes to a clause. The House of Commons never has anything to do with a marginal note." And James, L.J., at p. 465, said: "Is it not a mere abstract of the clause intended to catch the eye?" But the statement is perfectly correct as to modern Acts, the copies printed on vellum and deposited with the Clerk of the Parliaments and at the Rolls House contain the marginal notes which appear in the ordinary printed copies. [On July 20, 1875 (b), Mr. Raikes, the Chairman of Committees, ruled that the marginal notes of an Act could not be amended in committee, and this ruling, which extended to titles of groups of clauses and cross-headings, was supported by Mr. Dodson, a former chairman. Acting apparently on this view of the law, the editor of the first Revised Edition of the Statutes has (as he states in the preface to vol. xi.) revised the marginal notes throughout the edition], and the same process is adopted in Chitty's Statutes and their annual continuation (c).

It is not uncommon for the marginal note to an Act to refer to matters struck out of the Bill in its passage through Parliament. Thus, the Married Women (Maintenance in Case of Desertion) Act, 1886 (49 & 50 Vict. c. 52), s. 1 (2), had a marginal note as to the custody of children, though the text was silent on the subject.

With reference to the Railways Clauses Act, 1845 (8 & 9 Vict. c. 20), Bramwell, L.J., said in *Att.-Gen. v. G. E. Rail. Co.* (1879), 11 Ch. D. 449, 460: "What would happen if the marginal note differed from the section, which is a possibility, as is shown in sect. 112 of this Act? Does the marginal note repeal the clause, or the clause the marginal note?"

Punctuation.

In *Stephenson v. Taylor* (1861), 1 B. & S. 101, 106, Cockburn, C.J., said: "On the Parliament Roll there is no punctuation, and we therefore are not bound by that in the printed copies." This statement seems to be also applicable to the vellum prints. The copies printed on vellum since 1850 are certainly in some cases punctuated, but punctuation is discouraged by the Parliamentary officials owing to the difficulties which arise when the punctuation is not altered to give effect to amendments made in committee. Punctuation when it occurs in the vellum copies is,

(z) As to this *dictum*, Jessel, M.R., said in *Sutton v. Sutton* (1882), 22 Ch. D. 511, 513: "The *dictum* in that case is not strictly correct. I have since ascertained that the practice is so uncertain as to the marginal notes that it cannot be laid down that they are always on the Roll."

(b) 225 Hansard (3rd series), p. 1759. See Roscoe, *Nisi Prius* (17th ed.), 104.

(c) They differ from the King's printer's copies. *Vide* Lumley, *Public Health Act* (3rd ed.), Preface, p. vi.

it is submitted, to be regarded, to some extent at least, as *contemporanea expositio* (d).

[In *Barrow v. Wadkin* (1857), 24 Beav. 330, the question arose whether the words in 13 Geo. 3, c. 21, s. 3, are to read "aliens' duties, customs and impositions," or "aliens, duties, customs and impositions." "I supposed," said Romilly, M.R., "I should not learn much on the subject from the inspection of the Roll of Parliament (e), but as it was in my custody I have examined it. It seems that in the Rolls of Parliament the words are never punctuated, and accordingly, very little is to be learnt from this document." One of the effects of the original statutes not being punctuated is that it is often difficult to decide whether words apply only to a particular branch of a sentence, and are to be read distributively, *reddendo singula singulis*, as it is called, or whether they govern the whole sentence. It does not appear that any definite rule can be laid down as to this; but, as Dwarris says as to this point (ed. 2, p. 601), "the intention must be collected from the context to which the words relate." Thus, it was held in *Badger v. South Yorkshire Rail. Co.* (1858), 1 E. & E. 347, 364, that the word "purchase," as used in 12 Geo. 1, c. 38, s. 2, "may be applicable, *reddendo singula singulis*, to the other purposes for which the acquisition of the soil is certainly necessary"; and in *Phillips v. Highland Railway* (1883), 8 App. Cas. 366, it was held that the Merchant Shipping Act, 1854, s. 189, must be so read.

Consequent difficulty of deciding whether words are to be construed *reddendo singula singulis*.

17 & 18 Vict. c. 104.

[In *Duke of Devonshire v. O'Connor* (1890), 24 Q. B. D. 468, which turned on the construction of an enclosure Act (38 Geo. 3, c. 18), Lord Esher, M.R., said (p. 478): "It has been said that there are brackets in it" (an exception in the Act), "but that we must read it as though the brackets were removed to some other part of the clause. But if notice is to be taken of the brackets, it must be subject to the language used, and then it may be shown that either at both ends or at one end of the parenthesis the bracket must have been erroneously placed, and that the brackets must be put in the right place according to the sense and construction of the language used. To my mind, however, it is perfectly clear that in an Act of Parliament there are no such things as brackets any more than there are such things as stops."]

4. Preambles, especially in the earlier Acts, have been regarded as of great importance as guides to construction.

Effect of preamble.

Coke (1 Litt. 11 b) says: "From statutes his [Littleton's] arguments and proof are drawn first from the rehearsal or preamble of the statute." ["The proper function of a preamble," says Lord Thring (f), "is to explain certain facts which are neces-

Object of preamble.

(d) *Vide ante*, p. 79 *et seq.*

(e) The document referred to by Lord Romilly seems to be the Chancery Roll, and not the Parliament Roll of the Statutes. *Vide ante*, p. 43.

(f) Practical Legislation (ed. 1902), p. 92.

28 & 29 Vict.  
c. 48.

sary to be explained before the enactments contained in the Act can be understood; for example, the Courts of Justice Building Act, 1865, proposed to apply certain funds to the payment of the expenses of constructing new Courts of Justice (*g*). Accordingly, a long preamble was prefixed to the Act, explaining the origin of these funds, for without such a preamble it would have been impossible for Parliament to have understood the subject-matter of the Act" (*h*).]

The preamble of a public Bill is usually considered last in committee, and amended to correspond with the clauses as settled in committee (*i*).

All Acts which fall within the Parliamentary description of private Bills are required by the Standing Orders to have preambles, and the petitioners are required to prove the preamble, which is required to explain the reasons for the exception sought to be made to the general law, and to justify Parliament in granting the exceptional powers sought for.

It is the duty of a select committee on a private Bill to report (*k*) that the allegations of the Bill (*i.e.*, the contents of the preamble) have been examined (*l*), and also as to any alterations made by the committee in the preamble, and the ground of making them (*m*). It may fairly be contended that, in view of the Standing Orders, the recitals of the preamble of a private Act should be treated by the Courts as conclusive as between the parties to the Parliamentary bargain contained in the Bill and as to the public utility of passing the Bill, inasmuch as they are not adopted without examination of witnesses, and in many cases after prolonged opposition and argument, before a select committee (*vide ante*, p. 38; *post*, Part IV.).

Judicial inquiry into preambles of Bills.

Evidence in proof of the preambles of private Bills in the Lords used to be taken by the judges, to whom petitioners for private Bills were referred to hear the parties and report to the House the state of the case and their opinion thereon. The witnesses heard before the judges were sworn at the Bar of the House of Lords if the Bill related to landed estate, but by 41 Geo. 3, c. 105, Scotch and Irish judges have power to administer an oath on the reference of a Bill to them (*n*). Since 1843 the judges do not take evidence, and the only Bills referred to the judges are estate Bills (which always originate in the House of Lords), and of those, only such as have not been previously approved by the High Court of Justice (Chancery Division (*o*)).

(*g*) The preamble to 5 Geo. 3, c. 26, recites the title to the Isle of Man during 300 years, and extends over eighteen pages.

(*h*) In the case of public Bills, preambles are now often superseded by a memorandum or breviat explaining the object of the Bill; *vide ante*, p. 124.

(*i*) 1 Cliff. 865; *vide ante*, p. 180, note (*i*).

(*k*) Standing Orders H. C. 1906, 148, Private Business.

(*l*) *Ibid.* 149.

(*m*) May, Parl. Pract. (10th ed.), p. 778.

(*n*) 2 Cliff. 768.

(*o*) *Ibid.* 770; S. O. (H. L.) Private Bills, 153, 156 (1905).



[Lord Holt is reported to have said, in *Mills v. Wilkins* (1704), 6 Mod. 62, that "the preamble of a statute is no part thereof, but contains generally the motives or inducements thereof"; but this *dictum* is not in accordance with the opinion held at the present day. "The preamble," said Pollock, C.B., in *Salkeld v. Johnson* (1848), 2 Ex. 283, "is undoubtedly part of the Act." So also, in *Davies v. Kennedy* (1869), Ir. R. 3 Eq. 697, Christian, L.J., said: "The preamble, which of course is a most important part of the statute . . ." Whether the preamble be considered as an integral part of the statute or not, the general rule with regard to its effect upon the enacting part of the statute has always been that if the meaning of the enactment is clear and unequivocal without the preamble, the preamble can have no effect whatever.] This rule was thus stated in *Powell v. Kempton Park Racecourse Co.*, (1899) App. Cas. 143, 157, by the Earl of Halsbury: "Two propositions are quite clear, one that a preamble may afford useful light as to what a statute intends to reach, and the other that if an enactment is itself clear and unambiguous, no preamble can qualify or cut down the enactment."

But still "the preamble is the key (*p*) to the statute, and affords a clue to the scope of the statute, where the words construed in themselves without the aid of the preamble are capable of more than one meaning. There is, however, another rule or warning which cannot be too often repeated, that you must not create or imagine an ambiguity in order to bring in the aid of the preamble or recital. To do so would in many cases frustrate the enactment and the general intention of the Legislature" (*q*). And Lord Blackburn in deciding upon the meaning of Sturges Bourne's Act as to the rating of small tenements, in *West Ham Assessment Committee v. Iles* (1883), 8 App. Cas. 386, 388, said: "I quite agree with the argument which has been addressed to your lordships, that in construing an Act of Parliament, where the intention of the Legislature is declared by the preamble, we are to give effect to the preamble to this extent, namely, that it shows us what the Legislature are intending, and if the words of enactment have a meaning which does not go beyond that preamble, or which may come up to the preamble, in either case we prefer that meaning to one showing an intention of the Legislature which would not answer to the purposes of the preamble, or which would go beyond them. To that extent only is the preamble material." In that case it had been contended that the construction adopted by the Court would "baffle the preamble" (*r*). And Lord Davey in *Powell v.*

Preamble is integral part of statute.

59 Geo. 3.  
c. 12, s. 19.

If language of enactment is clear, preamble must be disregarded.

(*p*) Cf. *Halton v. Cove* (1830), 1 B. & Ad. 538, 558, adopted by Lord James in *Powell v. Kempton Park Racecourse Co.*, (1899) A. C. 143, 193.

(*q*) *Powell v. Kempton Park Racecourse Co.*, *loc. cit.*, per Lord Davey, at p. 185.

(*r*) Cf. *Richards v. Scarborough Market Co.* (1854), 23 L. J. Ch. 110, Knight Bruce, L.J.; [*Hughes v. Chester Rail. Co.* (1862), 31 L. J. Ch. 100, Channell, B.]

*Kempton Park Racecourse Co.* (*ubi sup.*), said: "It may well be in this and in other cases that the Legislature, taking the recited facts as the occasion of the enactment, have deliberately used large words to prevent the same kind of mischief in other forms" <sup>(s)</sup>.

But if language is not clear, preamble may be resorted to to throw light on meaning.

[If the object or meaning of an enactment is not clear, "the preamble," as Buller, J., said in *Crespigny v. Wittenoom* (1792), 4 T. R. 793, "may be resorted to to explain it." "The preamble of the statute," said Lord Coke, in 1 Inst. 79 a, "is a good means to find out the meaning of the statute, and as it were a key to open the understanding thereof." In the *Sussex Peerage case* (1844), 11 Cl. & F. 143, the judges enunciated the rule as follows: "If any doubt arises from the terms employed by the Legislature, it has always been held a safe mean of collecting the intention to call in aid the ground and cause of making the statute, and to have recourse to the preamble, which, according to Chief Justice Dyer, is 'a key to open the minds of the makers of the Act, and the mischiefs which they intended to redress'" <sup>(t)</sup>.] In *Coosaw Mining Co. v. South Carolina* (1891), 144 U. S. 550, 563, Harlan, J., stated the rule in the U. S. to be: "While express provisions in the body of an Act cannot be controlled or restrained by the title or preamble, the latter may be referred to when ascertaining the meaning of a statute which is susceptible of different constructions" <sup>(u)</sup>.

If very general language is used, pre-

[If very general language is used in an enactment, which it is clear must have been intended to have some limitation put upon

<sup>(s)</sup> [The case of *Wilson v. Knubley* (1806), 7 East, 128, gives a good illustration of the operation of this rule. The preamble of 3 Will. & Mary, c. 14, recites that "it hath often happened that several persons, having by bonds and other specialities bound themselves and their heirs, have to the defrauding of such their creditors devised their lands"; then by sect. 2 it is enacted that all such devices against creditors shall be absolutely void; and by sect. 3 it is further enacted that "all such creditors shall have their actions of debts upon such bonds against the devisees." The plaintiff in the action in question had by virtue of this statute sued the defendant, who was a devisee, but the action was of covenant and not of debt, wherefore it was contended by the defendant that the action would not lie. Lord Ellenborough, C.J., in deciding in accordance with the defendant's contention, said: "I agree with the plaintiff's counsel, that the grievance recited in the preamble would have led one to suppose that the Legislature meant to have given a larger remedy than the action of debt. . . . It is said only said that they should have their actions without more, there would have been ground for going the length of the argument of the plaintiff's counsel; but the Legislature has expressly limited the means of recovery by such creditors to actions of debt. . . . To extend it, therefore, to the action of covenant would be to legislate and not to construe the Act of the Legislature." In *Dean of York v. Middleburgh* (1827), 2 Y. & J. (Ex.) 196, Alexander, C.B., said: "What right have I to say that where the Legislature has enacted a prohibition in general terms more extensive than the preamble, that it did not mean that these terms should have their full and natural effect?" This rule applies even in criminal cases. Thus it is stated by Lord Hardwicke, in *Kinaston v. Clarke* (1741), 2 Atk. 205, that the Offences at Sea Act, 1536 (28 Hen. 8, c. 15), extends to trials in the West Indies.

<sup>(t)</sup> Quoted and approved by Halsbury, L.C., in *Income Tax Commissioners v. Pemsel*, (1891) A. C. 532, 542. As to recitals, see *post*, p. 189.

<sup>(u)</sup> He supports his opinion by citation of other decisions of the Supreme Court from the time of Marshall, C.J.

it, the preamble may be used to indicate to what particular instances the enactment is intended to apply. The case of *L'Apostre v. Le Plaisirier* (1708), cited in *Copeman v. Gallant* (1716), 1 P. Wms. 318, turned upon 21 Jas. 1, c. 19, ss. 10, 11, which enacts that: "And for that bankrupts frequently convey over *their* goods and yet continue in possession and dispose of them, be it enacted that if at any time hereafter any person shall become bankrupt and at such time shall by the consent and permission of the true owner have in their possession, order, and disposition *any* goods or chattels . . . that in every such case the commissioners shall have power to sell and dispose of the same for the benefit of the creditors. . . ." The plaintiff had delivered to one Levi (who afterwards became bankrupt) a parcel of diamonds to sell for him, and these diamonds were at Levi's bankruptcy seized by the defendants for the creditors, by virtue of this statute, as being goods in the possession of the bankrupt at the time of his bankruptcy. But it was held by Lord Holt that these diamonds were not liable to be seized as the property of the bankrupt, and that the general words of the clause ought to be explained and limited by the words of the preamble, "their goods." This decision, though not acquiesced in by Lord Cowper, was subsequently approved by Parker, C.B., in *Ryall v. Rolle* (1736), 1 Atk. 174, when he said as follows: "It has been laid down on the construction of 13 Eliz. c. 5, that the preamble shall not restrain the enacting clause. But I take it to be agreed that if the non-restraining the generality of the enacting clause will be attended with an inconvenience the preamble shall restrain it, and this is the case here, for otherwise merchants could not correspond or carry on their business without great danger and difficulty." And Lord Hardwicke added (at p. 182): "I am strongly inclined to be of opinion, with Lord Chief Justice Holt and my Lord Chief Baron Parker, that this clause is to be restrained by the preamble, and differ from Lord Cowper in the case of *Copeman v. Gallant*." So also in *Brett v. Brett* (1823), 3 Addams, 219, Sir John Nicholl is reported to have held that, inasmuch as it clearly appeared from the preamble that 25 Geo. 2, c. 6, only professed to deal with wills and codicils devising real estate, the expression "any will or codicil," whenever used in the Act, meant only a will or codicil which devised real estate, and in no way affected any will or codicil which bequeathed personalty.] "If the enacting words can take it in (the mischief which the statute was intended to remedy), they shall be extended for that purpose though the preamble does not warrant it" (x).

[But it must always be a question of some nicety for the Court to determine whether an Act is sufficiently explicit by itself or whether the preamble should be looked to for aid in

amble may indicate in what particular instances enactment is to apply.

Court must decide whether an Act is sufficiently

(x) Per Hardwicke, L.C., *Bassett v. Bassett* (1744), 3 Atk. 203; and see *Dean of York v. Middleburgh* (1827), 2 Y. & J. (Ex.) 196.

explicit by  
itself.

explanation of it. Thus in *Davies v. Kennedy* (1869), Ir. R. 3 Eq. 697, Christian, L.J., put a particular meaning upon the word "banker" as used in 33 Geo. 2, c. 14 (Irish), and in support of his view of the meaning of the word he relied largely upon the preamble of the Act. The House of Lords, however, in *Copland v. Davies* (1870), L. R. 5 H. L. 389, without in any way taking exception to the method by which he had arrived at his opinion, declined to adopt that method in this particular case, being apparently of opinion that the enactment in question was sufficiently explicit of itself. In *Winn v. Mossman* (1869), L. R. 4 Ex. 299, a question arose upon the meaning of 24 & 25 Vict. c. 75, s. 4, by which it is enacted that, "in the construction of the 9 Geo. 4, c. 61, the words 'town corporate' shall include every borough having a separate commission of peace, although it may not have a separate Court of quarter sessions." The Act of 9 Geo. 4 dealt with two different matters—namely, the application of penalties recovered under the Act and the granting of licences, and inasmuch as it is stated in the preamble of the Act of Victoria that doubts have arisen whether the boroughs in question come within the Act of 9 Geo. 4 "so as to give the justices of such boroughs control over the granting of licences," but no allusion is made in the preamble to the other subject dealt with in the Act—namely, the application of the penalties—it was held that the Act affected only the granting of licences, because that matter alone was mentioned in the preamble. "The words of the section," said Kelly, C.B., "are no doubt large enough by themselves to give the penalties levied under the Act to the treasurer of the borough, but when we see from the preamble that the single object of the section was to provide for the one special case of granting licences, the effect of the preamble is to control the enacting part of the section, and limit it to providing a remedy for the difficulty referred to as to the power to grant licences."]

Effect of  
repealing  
preambles.

The practice of repealing the preambles of Acts which are still in force has been adopted by the Statute Law Revision Committee in deference to the desire expressed by Parliament to have a cheap edition of the existing statute law (*y*). But, as pointed out by Sir F. Pollock (*z*), the repeal or omission of preambles, unless used with consummate discretion, is likely to obscure the history and meaning of legislation out of proportion to any saving of extent and bulk: and the repeal of a preamble in no way affects the construction of the statute (*a*). Conse-

(*y*) The Statute Law Revision Acts of 1890 provide for the qualified repeal of a number of preambles, and authorise their omission from the (second) Revised Edition of the Statutes. See 53 & 54 Vict. c. 33, ss. 1, 3, as to the reasons for this policy; see Ilbert, *Legislative Methods and Forms*, pp. 25, 71.

(*z*) 6 *Law Quarterly Review*, 472.

(*a*) See *Powell v. Kempton Park Racecourse Co.*, (1897) 2 Q. B. 242, 269, Smith, L.J.

quently, the second edition of the Revised Statutes, although it may become popular reading, will not be of great professional value, as it will be almost invariably necessary, when any question of construction arises, to refer to the unabbreviated statute or the Statutes at Large (*b*).

The preamble is in the form of a recital, but some statutes also contain subsidiary preambles or recitals prefacing particular sections. With regard to such recitals the canon of construction is the same as in the case of the preamble. That they may not be referred to for purposes of construction of the enacting part is clear and unambiguous (*c*).

5. The practice of grouping sections of an Act under different headings was first introduced in 1845 in the Clauses Consolidation Acts (*d*). Headings are divisible into those which can and those which cannot be grammatically read into the following sections of the statute (per Sir R. Collier, *Union Steamship Company of New Zealand v. Melbourne Harbour Trust Commissioners* (1884), 9 App. Cas. 365, 369). Headings of the first class are not used in the more recent statutes. They constitute a sort of preamble prefixed to a class of clauses for the purpose of connecting those clauses with other classes of clauses. The effect of the headings used in the Clauses Consolidation Acts of 1845 has been discussed twice in the House of Lords. ["These various headings," said Channell, B., in *Eastern Counties Railway v. Marriage* (1861), 9 H. L. C. 32, 41, "are not to be treated as if they were marginal notes, or were introduced into the Act merely for the purpose of classifying the enactments. They constitute an important part of the Act itself, and may be read not only as explaining the sections which immediately follow them, as a preamble to a statute may be looked to to explain its enactments, but as affording a better key to the construction of the sections which follow them than might be afforded by a mere preamble." The case last referred to turned upon the 93rd and 94th sections of the Lands Clauses Consolidation Act, 1845, which are preceded by the following heading: "And with respect to small portions of intersected land, be it enacted as follows." The 93rd section then begins thus: "If any land not being situated in a town," &c., and the 94th section begins, "If any *such* land shall be so cut through and divided," &c. "The only question," said Lord Campbell, "in this case, is whether the word '*such*' in sect. 94 refers to the words in sect. 93—viz., 'lands not being situate in a town or built upon,' or refers to the heading which is prefixed to these two sections—viz., 'and with respect to small portions of inter-

Recitals.

Headings.

Certain headings part of the Act.

s &amp; 9 Vict. c. 18.

(*b*) See *ante*, pp. 32—35.

(*c*) *Crowder v. Stewart* (1880), 16 Ch. D. 368, on the recitals in *Hinde Palmer's Act* (32 & 33 Vict. c. 46); *Bentley v. Rotherham*, 4 Ch. D. 588, on the recitals in a local Act.

(*d*) Thring, "Practical Legislation" (ed. 1902), p. 58.

sected land.' The question does not depend upon any general principle of law, but on the meaning of the Legislature in the use of the language. . . ." The House of Lords ultimately decided that the word "such" referred to the words used in the heading (e).]

8 & 9 Vict.  
c. 20.

In *Hammersmith Rail. Co. v. Brand* (1869), L. R. 4 H. L. 171, the question in dispute turned on the 6th and 16th sections of the Railway Clauses Act, 1845. Sects. 6—30 are preceded by a heading in these terms: "And with respect to the construction of the railways and the works connected therewith, be it enacted as follows." These words were held by Lord Chelmsford (at p. 203) and by Lord Colonsay (at p. 209) to be part of the Act, and usefully referred to to determine the sense of any doubtful expression in any particular section ranged under a particular heading. Lord Cairns dissented from the judgment of the House of Lords, and laid down (at p. 217) a rule which, though perhaps inapplicable in the case, seems to be a proper limitation of the occasions for reference to headings: "I think that the headings of these clauses are not to be relied on—and many other instances of the same kind inside the clauses themselves—showing just in the same way that an Act of Parliament often goes beyond the preamble, that provisions have been introduced in the progress of the clauses going somewhat beyond the short and summary definition in the heading of the clauses. In fact, one of these Acts of Parliament shows that these short headings were introduced merely to earmark a set of clauses, and to afford a short and summary way by which they might be introduced by reference as enactments into other Acts of Parliament."

12 & 13 Vict.  
c. 106.

The same method of drafting was adopted in the Bankruptcy Act, 1849, and [in *Bryan v. Child* (1850), 5 Ex. 368, it was held that the heading to sects. 133—138, "with respect to transactions with the bankrupt and executions against his property, or within a limited period previous thereto, be it enacted," must be read as embodied in each of those clauses, although in some (sects. 136, 137) the words of an enactment were repeated.] Pollock, C.B. (p. 374), described the heading as an introductory preamble to the set of clauses; Alderson, B., spoke of the clauses as being within the ambit of the preamble; and Rolfe, B. (Lord Cranworth), said that the preamble must be read with sects. 133—135 as a matter of grammar, and that the repetition of the words of enactment in sects. 136, 137, was a mere matter of style, but added that the latter sections, being *in pari materia*, must be read in the same way, which seems to beg the question at issue.

Headings do  
not affect  
construction  
where clear.

But the same general rule which regulates the effect of the preamble (f) applies also to these headings—namely, that they

(e) See 9 H. L. C. at p. 68, Lord Wensleydale.

(f) See this general rule discussed *ante*, p. 185.

are not to be taken into consideration if the language of the enactment is clear.

The practice of division into parts, now usual in all lengthy Acts, and of grouping or classifying the enactments under headings or titles, was introduced in the Merchant Shipping Act, 1854, and was derived from the Code of the State of New York (*g*). This second class of heading is frequently used in statutes passed since 1861, and the use increases, as it facilitates reference and gives a key to the governing intention of each part of a complicated Act (*h*).

Sub-headings.

17 & 18 Vict.  
c. 104.

The Companies Act, 1862, contains sections enacting and specifying the subsequent divisions, and in Acts so constructed it is beyond controversy that the headings are part of the Act (*i*). In the absence of such specific provision, any controversy as to whether such headings were before Parliament or inserted by the printers can only be settled, if at all, by reference to the vellum print of the Act in the custody of the Clerk of the Parliaments.

25 & 26 Vict.  
c. 89.

The headings are sometimes in Roman and sometimes in italic letters, but the former are usually confined to stating the part of the Act, and the latter state the sub-division of the part.

It was at one time supposed that Courts of law would not recognise the division into parts or the headings as substantive parts of the Act. But they are gradually winning recognition as a kind of preamble to the enactments which they precede, limiting or explaining their operation (*k*).

In *Inglis v. Robertson*, (1898) App. Cas. 616, which turned on the meaning of the Factors Act, 1889 (*l*), Lord Herschell said (p. 630): "The Act is divided into parts. The first, headed 'Preliminary,' consists of a definition clause. The last part, headed 'Supplemental,' contains provisions as to the mode of transfer 'for the purposes of the Act' and certain savings. The other two parts are headed respectively 'Dispositions by mercantile agents' and 'Dispositions by buyers and sellers of goods.' These headings are not, in my opinion, mere marginal notes, but the sections in the group to which they belong must be read in connection with them and interpreted by the light of them." Sometimes indeed they are

52 & 53 Vict.  
c. 45.

\* (*g*) Lord Thring, "Practical Legislation" (ed. 1902), p. 59, where the effect of these headings is considered from a draftsman's point of view.

(*h*) *E.g.* in sect. 2 of the London Building Act, 1894 (57 & 58 Vict. c. cxxiii).

(*i*) The Merchant Shipping Act, 1854, did, but the Merchant Shipping Act, 1894 (57 & 58 Vict. c. 60), does not, contain sections specifying the subdivisions. Lord Thring, "Practical Legislation" (ed. 1902), p. 60, advises the following of the model of 1854 as putting it out of the power of Courts of law to refuse to recognise the division into parts as being a substantive part of the statute.

(*k*) In *Laurie v. Rathbun* (1879), 38 U. C. Q. B. 255, 259, the view was expressed that the divisions under which the clauses are arranged may be looked to as a better key to construction than a mere preamble.

(*l*) As extended to Scotland by 53 & 54 Vict. c. 40.

inserted, as was said in *Union Steamship Co. v. Melbourne Harbour Commissioners* (1884), 9 App. Cas. 369, "merely for the purpose of convenience of reference, and are not intended to control the interpretation of the clauses which follow. But the Court there added: 'It may be indeed that the fact of a clause being found in a certain group may in some cases possibly throw some light on its meaning.'"

24 & 25 Vict.  
c. 134.

[“Although,” said Kelly, C.B., in *Latham v. Lafone* (1867), L. R. 2 Ex. 119, in discussing sect. 192 of the Bankruptcy Act, 1861, “we may refer to the introductory words of the section to put a construction on a doubtful part of the statute, yet if the language of the enactment is clear, and includes in express terms such a document as this [a letter of licence], we should not be justified in limiting that sense by the introductory words.”]

29 & 30 Vict.  
c. cclxxiii.

The Glasgow Police Act, 1866, is divided into thirty-three parts, numbered separately in Roman numerals, and preceded by headings in Roman letters; and some of the divisions (*e.g.*, xx.) are subdivided, each subdivision being preceded by sub-headings in italics. It contains no separate section providing for or recognising that this division is part of the Act, but some references in sections to the headings. Moreover, some of the sections under the sub-heading (*e.g.*, sect. 251) refer in terms to the heading under which they are classed. The words of enactment are inserted only at the beginning of the Act, and are not repeated before any of the headings. Part xxvii. sects. 364—386, is headed BUILDINGS—THEIR ERECTION, ALTERATION, AND USE. A controversy arose upon the construction of sect. 384, with reference to the obligation of the owner of a land or heritage to fence the same, as to whether the section obliged a riparian owner to fence the side of his land next to the river Clyde. And the interpretation of the section turned upon whether the heading above cited could be considered, or governed the section in question. The House of Lords, in *Lang v. Kerr* (1878), 3 App. Cas. 529, decided that the heading could be considered, and limited the generality of the terms used in sect. 384. [As Lord Cairns said, at p. 536, “These headings in this Act are not to be looked upon as marginal notes, inserted, perhaps, not by Parliament, but by the printer, because they are referred to in the body of the Act itself” (*n*).] Lord Hatherley, in the same case, took the same view, saying (p. 542) that the parts or divisions of the Act were parts of the body of the Act itself, and not marginal notes (*o*).

(*n*) But see the ruling of Mr. Raikes, *ante*, p. 182; and Roscoe, *Nisi Prius* (17th ed.), p. 104.

(*o*) See *Williams v. Permanent Trustee Co. of N. S. W.*, (1906) A. C. 248, 252, on the construction of a colonial Consolidation Act divided into parts; and also *Saunders v. Borthistle* (1904), 1 Australia C. L. R. 379, 389, on an Act of similar construction.



The Public Health Act, 1875, is divided into parts, each preceded by a heading in Roman letters. The parts and these headings are made part of the Act by sect. 3. Besides the headings so recognised, there are also before each part sub-headings in smaller capitals, and further sub-divisions in italics, to which sect. 3 makes no reference. In *R. v. Local Government Board* (1882), 10 Q. B. D. 309, a question arose as to the meaning of sect. 268, which is one of two sections under the italic sub-heading *Appeal* in Part vii., headed LEGAL PROCEEDINGS. Brett, L.J. (at p. 321), said of the sub-heading: "I cannot come to the conclusion that the heading of a series of sections introduced into an Act of Parliament is not to be considered as part of the Act. I think that that word 'Appeal' at the head of the section may properly be considered as part, and used for the purpose of construing any doubtful matter in the sections under that very heading" (*p*).

The Scotch view of these general headings was thus stated in *Nelson v. McShee* (1889), 17 Rettie (Justiciary), 1, by Lord McLaren: "There are five sections in the statute under the general heading of 'Unwholesome and Adulterated Food.' I rather think that more importance has been attached by the Court to a general heading such as this than has ever been given to the side readings [marginal notes] of individual sections. Side readings are not part of the Act, but a heading such as this occurring in the text is held to be part of the Act." In the case in question, by reference to the general heading, Lord McLaren was led to the conclusion that possession of unsound meat was not an offence against the statute in question (the Glasgow Police Act, 1866, 29 & 30 Vict. c. cclxxiii.) unless it was intended to be sold for human food; and his view of the statute was adopted by the Court of Justiciary in *Scott v. Alexander* (1890), 17 Rettie (Justiciary), 35.

Scotch construction.

6. [In some, perhaps in the majority, of modern Acts of Parliament, there is what is called an "interpretation clause." By such clauses it is enacted that certain words when found in the Act (*q*) are to be understood in a certain sense, or are to

Interpretation clauses.

(*p*) In *Nicholson v. Toko Reihana* (1904), 23 N. Z. L. R. 614, the Court had to construe sects. 43—46 of the Maori Lands Administration Act, 1900 (63 Vict. No. 55), which fall under an italic cross-heading, "As to the Application of Proceeds of Alienations by the Council." The Act is divided into parts by sect. 2, including Part III., described as "Powers of Council and Administration of Maori Lands within each District," sects. 9—49. These words are repeated in capitals at the head of the fasciculus beginning with sect. 9. Part III. is further divided by cross-headings which are not referred to in sect. 2. Cooper, J., at p. 618, said: "In ascertaining . . . the meaning of an ambiguous section in a statute, although the marginal notes to the various sections of the statute form no part of the Act, and may not be considered for the purpose of construing its provisions, a different rule applies to headings and sub-headings. These headings and sub-headings are considered part of the statute, and may materially affect its construction."

(*q*) ["I cannot call to mind," said Grove, J., in *Budge v. Andrews* (1868), L. R. 3 C. P. D. 521, "any case in which an interpretation clause in a previous

Usually extend meaning of word interpreted.

include certain things which, but for the interpretation clause, they would not include. Thus, in *Cotter v. Midland Railway* (1847), 2 Phill. 469, the word "railway" was interpreted by sect. 3 of 8 & 9 Vict. c. 20, to mean "the railway and works by the special Act authorised to be constructed"; and it was held by Lord Cottenham that, by virtue of this interpretation clause, the company had power to take land compulsorily under the Act for the purpose of building a railway station upon.]

There are two forms of interpretation clause. In one where the word defined is declared to "mean" A. the definition is explanatory and *prima facie* restrictive. In the other, where the word A. is declared to "include" B., the definition is extensive. Sometimes the definition contains the words "mean and include," which inevitably raises a doubt as to interpretation (*v*).

45 & 46 Vict. c. 22.

Interpretation clauses frequently fall under severe judicial criticism from failure to observe the valuable rule never to enact under the guise of definition. In *R. v. Commissioners under the Boilers Explosion Act, 1882*, (1891) 1 Q. B. 703, the question arose whether a steam pipe conducting steam to a pumping engine in a mine from a boiler on the surface was a boiler within the meaning of the Act above mentioned, *i.e.* "a closed vessel for generating steam, &c." (sect. 3). The Court went somewhat far in deciding that it was, and Lord Esher, M.R., said (at p. 716): "The draftsman has gone upon what, in my mind, is a dangerous method of drawing Acts of Parliament. He has put in a section which says that a boiler shall mean something which is in reality not a boiler. This third section of the Act is a peculiarly bad specimen of the method of drafting which enacts that a word shall mean something which in fact it does not mean." And the same judge said in *Bradley v. Baylis* (1881), 8 Q. B. D. 210, 230, with reference to the Franchise and Registration of Electors Acts: "It seems to me that nothing could be more difficult, nothing more involved, than these statutes, and that that difficulty arises from the fact of Parliament insisting upon saying that things are what they are not" by saying that "a dwelling-house" shall mean a part of a dwelling-house (*s*).

*Act has been allowed to control or limit the effect of provisions in a subsequent Act."*] This must depend on whether the Acts are or are not to be read as one. The Interpretation Act, 1889 (52 & 53 Vict. c. 63), s. 31, specifically provides that terms used in Rules, &c. made after 1889 under any Act are to have the same meaning as in the Act, unless a contrary intention appears.

(*v*) See Ilbert, Legislative Forms and Methods, p. 281.

(*s*) [This was pointed out by Lord St. Leonards in *Dean of Ely v. Bliss* (1852), 2 De G. M. & G. 471. He there said: "It has been much doubted, and I concur in that doubt, whether these interpretation clauses, which are of modern origin, have not introduced more mischief than they have avoided, for they have attempted to put a general construction upon words which do not admit of such a construction." See also per Jessel, M.R., in Parl. Pap. 1875, No. 208, p. 86. In *Lindsay v. Cundy* (1876), 1 Q. B. D. 358, Blackburn, J., said: "An interpretation clause is a modern innovation, and frequently does a great deal of harm";] and in *Wakefield v. West Riding, &c. Rail. Co.* (1865), 6 B. & S. 801,

[But an interpretation clause which extends the meaning of a word does not take away its ordinary meaning (*t*).] In discussing the meaning of the term "street" as used in the Public Health Act, 1875, s. 157, and interpreted in sect. 4, Lord Selborne said in *Robinson v. Barton Eccles L. B.* (1883), 8 App. Cas. 798, 801: "An interpretation clause of this kind is not meant to prevent the word receiving its ordinary, popular, and natural sense whenever that would be properly applicable, but to enable the word as used in the Act, when there is nothing in the context or the subject-matter to the contrary, to be applied to some things to which it would not ordinarily be applicable. I look upon this portion of the interpretation clause as meaning neither more nor less than this, that the provisions contained in the Act as to streets, whether new streets or old streets, shall, unless there be something in the subject-matter or the context to the contrary, be read as applicable to these different things. It is perfectly consistent with that that they should be read as applicable, and should be applied, to those things to which they in their natural sense apply, and which do not require any interpretation clause to bring them in." "An interpretation clause," said Lush, J., in *R. v. Pearce* (1880), 5 Q. B. D. at p. 389, "should be used for the purpose of interpreting words which are ambiguous or equivocal, and not so as to disturb the meaning of such as are plain," or, as Lord Coleridge said in *London School Board v. Jackson* (1881), 7 Q. B. D. 502, so as "to prevent the operation of a word in its primary and obvious sense" (*u*). "The interpretation clause," said Cotton, L.J., in *Nutter v. Arrington L. B.* (1879), 4 Q. B. D. 375, 384, "is not restrictive. It does not say that the word 'street' shall be confined to any highway not being a turnpike road, but that it shall 'apply to and include any highway not being a turnpike road.' That is enlarging, not restricting, the meaning of 'street,' that is to say, that which, independently of the Act of Parliament, in ordinary language, is properly a street does not cease to be so because it is part of a turnpike road." [In *Ex parte Ferguson* (1871), L. R. 6 Q. B. 280, a

But interpretation clauses do not in that case take away natural and ordinary meaning of words interpreted.  
38 & 39 Vict. c. 55.

Cockburn, C.J., said: "I hope the time will come when we shall see no more of interpretation clauses, for they generally lead to confusion." Nevertheless, Blackburn, J., in *R. v. Ingham* (1864), 5 B. & S. 277, remarks that, "as a doubt existed [as to the meaning of the word 'indictment'], Lord Campbell thought it worth while, in framing 14 & 15 Vict. c. 100, s. 30, to introduce an interpretation clause, and it would have been better if the framer of 24 & 25 Vict. c. 100, s. 7, had used the same precaution." But in *Mayor, &c. of Portsmouth v. Smith* (1885), 10 App. Cas. 364, 374, Lord Blackburn speaks of "the soundness of the objection of the old school of draftsmen to the introduction of interpretation clauses."

(*t*) Cf. *Midland Rail. Co. v. Ambergate Rail. Co.* (1853), 10 Hare, 359.

(*u*) From a draftsman's point of view, an interpretation clause is objectionable which enacts under the guise of definition or alters the natural and ordinary meaning of the term defined. Parliament, in adopting such clauses, encroaches on the functions of popular usage, *Quem penes est arbitrium et jus et norma loquendi*. See Thring, "Practical Legislation" (ed. 1902), 95.

33 & 34 Vict.  
c. 90.

Interpretation  
clauses some-  
times inserted  
merely *ex*  
*abundanti*  
*cautelâ*.

question arose as to the meaning of the enactment in 17 & 18 Vict. c. 104, s. 2, that the word "ship" shall include "every description of vessel used in navigation not propelled by oars." It was consequently contended that a fishing-boat 24 feet long, partially decked over and fitted with two masts and a rudder, and also with four oars, which were sometimes used to propel it along, was not a ship within the meaning of the Act, because it was propellable by oars. In deciding against this argument, Blackburn, J., said: "The argument against the proposition that this is a ship is one which I have heard very frequently, viz., that, when an Act says that certain words shall include certain things, the words must apply exclusively to that which they are to include. That is not so; the definition given of a ship is in order that the word 'ship' may have a more extensive meaning, and the words 'not propelled by oars' are not intended to exclude all vessels that are ever propelled by oars." And this *dictum* of Blackburn, J., was cited with approval by Sir R. Phillimore shortly after it was pronounced. In *The Gauntlet* (1871), L. R. 3 Ad. & E. 381 (x), it was contended that a ship which had been employed as a steam-tug by a French ship of war to tow a Prussian prize, was not liable to be forfeited under the Foreign Enlistment Act, 1870, which enacts in sect. 8 "that if any person . . . despatches any ship with intent . . . that the same shall be employed in the *naval service* of any foreign State at war with any friendly State," such ship shall be forfeited; and in sect. 30, that "*naval service* shall include any user of a ship as a transport, store-ship, privateer, or ship under letters of marque." The Court held that the user of a ship as a steam-tug was included in the expression "naval service," on the ground that the interpretation clause was not of a restrictive, but an enlarging character, and "I am glad," added Sir R. Phillimore (at p. 388), "to be fortified in this conclusion by the opinion of Blackburn, J., upon a similar interpretation clause." [Sometimes a term is defined in an interpretation clause merely *ex abundanti cautelâ*—that is to say, to prevent the possibility of some common law incident relating to that term escaping notice. Thus, in *Wakefield v. West Riding, &c. Rail. Co.* (1865), L. R. 1 Q. B. 84, it appeared that by sect. 3 of the Railway Clauses Act, 1845 (8 & 9 Vict. c. 20), the term "justice of the peace" is defined as "a justice of the peace acting for the . . . place where the matter requiring the cognisance of a justice shall arise, *and who shall not be interested in the matter.*" It was therefore argued that by this definition jurisdiction was altogether taken away from a justice who was interested in the matter, and that this objection could not be waived. But it was held that the latter words of the definition were merely declara-

(x) Although this decision was overruled by the Judicial Committee (1872), L. R. 4 P. C. 184, this part of Sir R. Phillimore's judgment was approved.

tory of the common law, and were only added *ex abundanti cautela* (y): "in the apprehension," as Cockburn, C.J., said, "that justices, if not warned of what the law is, might act although interested. Had it been intended to render an interested justice absolutely incompetent, notwithstanding that both parties might waive the objection, a positive enactment to this effect would have been inserted."]

[Another important rule with regard to the effect of an interpretation clause is, that an interpretation clause, as the Court said in *R. v. Cambridgeshire* (1838), 7 A. & E. 491, is not to be taken as substituting one set of words for another, or as strictly defining what the meaning of a term must be under *all* circumstances, but rather as declaring what may be comprehended within the term where the circumstances require that it should be so comprehended. If, therefore, an interpretation clause gives an extended meaning to a word, it does not follow as a matter of course that, if that word is used more than once in the Act, it is on each occasion used in the extended meaning, and it may be always a matter for argument whether or not the interpretation clause is to apply to the word as used in the particular clause of the Act which is under consideration. "It appears to me," said Lord Selborne in *Meux v. Jacobs* (1875), L. R. 7 H. L. 493, "that the interpretation clause does no more than say that, where you find these words in the Act, they shall, unless there be something repugnant in the context or in the sense, include fixtures."]

Interpretation clause does not necessarily apply on every occasion when word interpreted is used in Act.

7. Before 1850 it was usual to preface each distinct portion of an Act by words of enactment, and division into sections had no legislative authority. [By 13 & 14 Vict. c. 21, s. 2, it was enacted that "*all Acts shall be divided into sections if there be more enactments than one*, which sections shall be deemed to be substantive enactments without any introductory words."] The portion in italics has been repealed without re-enactment by the Interpretation Act, 1889 (see sects. 8, 41), but without any real change in the law. It was, at most, a mere direction to draftsmen and parliamentary officials without any sanction. [There is not, however, any rule as to how many different sentences, each containing a substantive enactment, may be comprised in one "section," and it is clear, that whether an enactment "be printed as part of one section, or made in another section, can make," said Holroyd, J., in *R. v. Newark-upon-Trent* (1824), 3 B. & C. 71, "no difference in the construction of the statute." Thus, in *Cohen v. South-Eastern Rail. Co.* (1877), 2 Ex. D. 260, it appeared that at the end of sect. 16 of 31 & 32 Vict. c. 119, was the following enactment (now repealed):—"The provisions of the Railway and Canal Traffic Act, 1854, so far as the same are

Immaterial whether an enactment is contained in separate section or not.

52 & 53 Vict. c. 63.

17 & 18 Vict. c. 31.

(y) "*Abundans cautela non nocet* is an old maxim of the law," per Lord Fitzgerald in *West Riding Justices v. R.* (1883), 8 App. Cas. 781, 796.

applicable, shall extend to the steam vessels and to the traffic carried on thereby." It was argued that, as these words stood at the end of and formed part of sect. 16, and were not contained in a separate section, they only applied to the subject-matter to which the previous parts of sect. 16 related, and that consequently sect. 7 of the Act of 1854 (which related to something quite different from the subject-matter of this sect. 16) was not incorporated into the Act of 31 & 32 Vict. c. 119. "I am not aware," said Mellish, L.J., "that there is any such rule of construction of an Act of Parliament. If some absurdity or inconvenience followed from holding it to apply to the whole Act, it might be reasonable to confine the incorporation to clauses relating to some particular subject-matter, but if there is no inconvenience from holding that the incorporation includes sect. 7 as well as the other sections, we ought to hold that it does."]

It is usual now to distinguish the term "clause" (z) from the term "section" by using the former to denote the paragraph when in a Bill, the latter to denote it in an Act. But "clause" is often used for "section" in decisions or construction.

Construction  
of provisoes.

The effect of an excepting proviso, according to the ordinary rules of construction, is to except out of the preceding portion of the enactment something which but for the proviso would be within it; and such a proviso cannot be construed as enlarging the class of contracts falling within the scope of an enactment when it can be fairly and properly construed without attributing to it that effect (a).

In *West Derby Union v. Metropolitan Life Ass. Co.*, (1897) App. Cas. 647, Lord Watson said, at p. 652: "I am perfectly clear that if the language of the enacting part of the statute does not contain the provisions which are said to occur in it, you cannot derive these provisions by implication from a proviso. When one regards the natural history and object of provisoes, and the manner in which they find their way into Acts of Parliament, I think your Lordships would be adopting a very dangerous and certainly unusual course if you were to import legislation from a proviso wholesale into the body of the statute, although I perfectly admit that there may be and are many cases in which the terms of an intelligible proviso may throw considerable light on the ambiguous import of the statutory words" (b).

Rule as to  
construction  
of repugnant  
clauses.

"It is a cardinal principle," said James, L.J., in *Elbbs v. Boulnois* (1875), 10 Ch. App. 479, 484, "in the interpretation

(z) A clause of a will was defined by Lord Cairns in *Swinton v. Bailey* (1878), 4 App. Cas. 77, to be any "collocation of words in a will which, when removed out of a will, will leave the rest of the will intelligible." "The word 'clause,'" said Lord O'Hagan (at p. 84), "has various operations and is used in various ways; there may be a clause of a Bill in Parliament. . . ."

(a) See *Duncan v. Dixon* (1890), 44 Ch. D. 211, 215, Kekewich, J.

(b) See also the observations of Lord Herschell in the same case at p. 655.

of a statute, that if there are two inconsistent enactments, it must be seen if one cannot be read as a qualification of the other." [If the two inconsistent enactments cannot be so treated, then "the known rule," said Keating, J., in *Wood v. Riley* (1867), L. R. 3 C. P. 27, "is that the last must prevail." In *City of Ottawa v. Hunter* (1901), 31 Canada S. C. 7, two clauses in the same Act (60 & 61 Vict. c. 34) containing provisions differently worded as to appeals from different provinces of the Dominion were held to be distinct though simultaneous enactments, and the Court declined to treat the enactment which was later in position as overriding the earlier (c). But besides the enacting clauses, there are in many Acts provisos and saving clauses, and it sometimes happens that there is a repugnancy between the enacting clauses and the provisos and saving clauses. The question then arises, How is the Act, taken as a whole, to be construed?] "A proviso," said the Court in *Ex parte Partington* (1844), 6 Q. B. 653, "must be construed with reference to the preceding parts of the clause to which it is appended," and "as subordinate to the main clauses of the Act" (d). "It is a well-known rule," said Bovill, C.J., in *Horsnail v. Bruce* (1873), L. R. 8 C. P. 378, 385, "in the construction of statutes, that if a substantive enactment is repealed, that which comes by way of proviso upon it is impliedly repealed also." "When one finds a proviso to a section," said Lush, J., in *Mullins v. Treasurer of Surrey* (1880), 5 Q. B. D. 173, "the natural presumption is that, but for the proviso, the enacting part of the section would have included the subject-matter of the proviso."

[The generally accepted rule with regard to the construction of a proviso in an Act which is repugnant to the purview of the Act is that laid down in *Att.-Gen. v. Chelsea Waterworks* (1728), Fitzg. 195, namely, "that where the proviso of an Act of Parliament is directly repugnant to the purview, the proviso shall stand and be a repeal of the purview, as it speaks the last intention of the makers" (e). Construction of repugnant proviso.

[But it has been usually laid down that this rule only holds good with regard to a proviso if repugnant, and that if the repugnant clause is in the form of a saving clause, then this rule holds good no longer, for it is said that a saving clause which is repugnant to the purview of the Act is to be rejected and treated as void. In the *Case of Alton Woods* (1595), 1 Co. Rep. 47 b, Lord Coke gives the following illustration of this: "If it be recited by an Act of Parliament that whereas J. S. is seised of certain land in fee, this land by the same Act is given to the king in fee, saving the estates, rights, &c., of all persons, the Construction of a repugnant saving clause.

(c) *Loc. cit.* p. 11; Taschereau, J.

(d) Per Martin, B., in *Stourbridge Navigation Co. v. Earl of Dudley* (1860), 3 E. & E. 427, following *Dudley Canal v. Grazebrook* (1830), 1 B. & Ad. 59.

(e) Cf. Maxwell on Statutes (3rd ed.), 215.

estate of J. S. is not saved thereby, for that would be repugnant and make the express grant void." It appears very doubtful whether this distinction between the effect of a saving clause and a proviso would now be upheld, the reason of the distinction being, as Kent says in his Commentaries (*f*), by no means apparent, and contrary, as he tells us, to the rules of American law. The same view has been taken in the Irish case of *Clelland v. Ker* (1843), 6 Ir. Eq. R. 35, where it was held that a saving clause, if co-extensive with the enactment, is repugnant, and must give way to the enactment; and in the Scotch case of *Lord Advocate v. Hamilton* (1852), 1 Macq. H. L. (Sc.) 46, where it is said by Lord Brougham that, as a general rule, a salvo cannot create any affirmative or positive right. In the American case of *Savings Institution v. Makins* (1845), 23 Maine, 360, it was held that a saving clause in a statute in the form of a proviso, restricting in certain cases the operation of the general language of the enacting clause, was not void, though the saving clause was repugnant to the general language of the enacting clause. "The true principle," say the editors of the last edition of Kent's Commentaries, "undoubtedly is, that the sound interpretation and meaning of the statute on a view of the enacting clause, saving clause, and proviso, taken and construed together, are to prevail. If the principal object of the Act can be accomplished and stand under the restriction of the saving clause or proviso, the same is not to be held void for repugnancy" (*g*). This, it is submitted, would be held by our English Courts at the present day to be good law (*h*).]

Former rule  
as to pleading  
proviso or  
saving clause.

[There is another difference between the effect of a saving clause and a proviso, which it may perhaps be as well to notice here, although it has no longer any practical existence. This is, that, as Lord Abinger said in *Thibault v. Gibson* (1843), 12 M. & W. 94, "it is a well-established principle that in all cases where proceedings are taken for the recovery of a penalty under a statute if there is any *exception* in the clause which gives the penalty, exempting certain cases from its operation, the declaration or information must show that the particular case is not within the exception. But where the exception comes by way of *proviso* in a subsequent part of the Act, it is not necessary to notice it in the declaration or information, but it is a matter which the defendant must allege as a ground of defence."]

Present rule.

But this former rule of pleading is now abrogated as to civil proceedings (*i*) by the Rules of the Supreme Court. Ord. XIX. r. 15, provides that "the defendant or plaintiff, as the case may be, must raise by his pleading all matters which show the action or

(*f*) 1 Kent, Comm. (10th ed.), p. 522.

(*g*) 12th ed. by Holmes, vol. i. p. 463, note (*h*).

(*h*) But see the argument of Stephens, Q.C., in *Hebbert v. Purchas* (1870), L. R. 3 P. C. 605, 617; and *Riddle v. White* (1793), 1 Anstr. 294, Macdonald, C.B.

(*i*) See Annual Practice, 1906, p. 292.



counter-claim not to be maintainable, or that the transaction is either void or voidable in point of law, and all such grounds of defence or reply as, if not raised, would be likely to take the opposite party by surprise, or would raise issues of fact not arising out of the previous pleadings" (*j*). The need for setting out provisoes, &c., has been abolished as to prosecutions before a Court of summary jurisdiction by sect. 39 of the Summary Jurisdiction Act, 1879 (42 & 43 Vict. c. 49), but remains to some extent as to indictable offences created by statute (*k*).

[Besides provisoes and saving clauses, Acts of Parliament sometimes contain general enactments relating to the whole subject-matter of the statute, and also specific and particular enactments relating to certain special matters; and if the general and specific enactments prove to be in any way repugnant to one another, the question will arise, Which is to control the other? In *Pretty v. Solly* (1859), 26 Beav. 606, at p. 610, Romilly, M.R., stated as follows what he considered to be the rule of construction under such circumstances. "The general rules," said he, "which are applicable to particular and general enactments in statutes [if they are repugnant] are very clear; the only difficulty is in their application. The rule is, that whenever there is a particular enactment and a general enactment in the same statute, and the latter, taken in its most comprehensive sense, would overrule the former, the particular enactment must be operative, and the general enactment must be taken to affect only the other parts of the statute to which it may properly apply." "For instance," said the same judge in *De Winton v. Brecon* (1859), 28 L. J. Ch. 604, "if there is an authority in an Act of Parliament to a corporation to sell a particular piece of land, and there is also a general clause in the Act to the effect that nothing in the Act contained shall authorise the corporation to sell any land at all, the general clause would not control the particular enactment, and the particular enactment would take effect, notwithstanding the prior exception was not clearly expressed in the general clause. If the Court finds a positive inconsistency and repugnancy, it may be difficult to deal with it, but, so far as it can, it must give effect to the whole of the Act of Parliament." So in *Churchill v. Crease* (1828), 5 Bing. 177, the question was whether a payment made by a bankrupt before the issuing of the commission against him was protected by sect. 82 of 6 Geo. 4, c. 16, which enacted that "all payments really and *bonâ fide* made, or which hereafter shall be made, to any creditor by a bankrupt, before the issuing of the commission against him, shall be deemed valid." It was argued that, as by sect. 136 the Act was not to come into force until the September then next, and the payment in question was made before the

Construction of general and specific enactments if repugnant.

(*j*) As to implied savings in respect of other statutes, laws, or rights, see *post*, p. 290.

(*k*) See Archbold, Cr. Pl. (23rd ed.) 80; *R. v. James*, (1902) 1 K. B. 540.

September, the Act would not apply to that payment so as to protect it. The Court, however, held that the payment was protected. "I should have thought," said Best, C.J., "that sect. 136 was conclusive if there had been no conflicting intention to be collected from the Act, but the rule is that where a general intention is expressed (as here, that the Act should not come into force until September), and the Act expresses also a particular intention incompatible with the general intention [as here, that all payments *bonâ fide* made—*i.e.* *heretofore* made—shall be protected], the particular intention is to be considered in the nature of an exception."

Same rule applies if one Act is incorporated into another.

Where the later of two Acts provides that the two are to be read together, every part of each Act must be construed as if the two Acts had been one, unless there is some manifest discrepancy making it necessary to hold that the later Act has to some extent modified the provisions of the earlier Act (*k*). In other words, such a provision means that the earlier Act, so far as not expressly or impliedly repealed by the later Act, must be read with it, and does not exclude the possibility of implied repeal.

The effect of bringing into a later Act, *by reference*, sections of an earlier Act is just the same as if they had been actually written into it or printed into it, and in their construction the earlier Act need not be referred to at all. Nor can the mere fact of bringing clauses from an anterior Act into a subsequent Act on any legal principle prevent the subsequent Act from being treated entirely as a subsequent Act. In *Re Wood's Estate* (1886), 31 Ch. D. 607, 615, it was held that such a mode of legislation did not prevent the Lands Clauses Acts from being applied to the subsequent Act, so far as it contains any powers as to the taking of lands (*l*).

8 & 9 Vict.  
c. 18.

The effect of sect. 1 of the Lands Clauses Consolidation Act, 1845 (apart from any question whether it binds the Crown or any persons representing the Crown), is, that every part of that Act is to be considered to be incorporated with every subsequent Act which authorises the purchase or taking of lands for the purposes of any undertaking, save so far as its provisions are expressly varied or excepted by the subsequent Act, whether the Act be a public Act or local and personal only (*m*).

[And the same rule applies if an Act which lays down a

(*k*) *Canada Southern Railway Co. v. International Bridge Co.* (1883), 8 App. Cas. 723, 727. In statutes of 1877 and 1884, powers were given to make regulations for the more effectual protection and improvement of fisheries in New Zealand, and for the management of waters in which fishing might be carried on. The later Act incorporated the former. *Held*, that this had the effect of incorporating the clause defining "waters" so as to exclude waters the property of any private person, *i.e.* running over land of which he was the owner: *Campbell v. Macdonald*, (1902) 22 N. Z. L. R. 65.

(*l*) See, however, *Re Mills' Estate* (1886), 34 Ch. D. 24.

(*m*) *Re Wood's Estate* (1886), 31 Ch. D. 607 (C. A.).

general rule upon a subject is incorporated into another Act which gives a particular rule on the same subject—that is to say, in this case also the particular rule will abrogate the general rule. “If the incorporating Act,” said Lord Westbury in *Ex parte St. Sepulchre’s* (1864), 33 L. J. Ch. 373, “gives itself a complete rule on the subject, the expression of that rule will undoubtedly amount to an exception of the subject-matter of the general rule contained in the incorporated Act.” Thus, in *London, Chatham, and Dover Railway v. Wandsworth B. W.* (1873), L. R. 8 C. P. 185, it appeared that the Railways Clauses Act, 1845, was to be treated as incorporated into the special Act, except in so far as its provisions were expressly varied by the special Act. Now, the Railways Clauses Act contained provisions as to how railway companies might be proceeded against in case they allowed any of their bridges to remain out of repair; but the special Act also contained provisions on this subject different from those in the Railways Clauses Act; therefore the question arose which procedure was to be adopted, and it was held, in accordance with the rule above stated, that the fact of the special Act containing provisions on the subject was to be taken as expressly varying the provisions contained in the Railways Clauses Act. And so in *Att.-Gen. v. Great Eastern Rail. Co.* (1872), 7 Ch. App. 475, it was held by the Lords Justices (reversing the decision of Bacon, V.-C.) that the general enactment of 8 & 9 Vict. c. 20, s. 13, which provided that “where it is intended to carry the railway on an arch as marked on the said plan, the same shall be made accordingly,” was abrogated by the special enactment of the company’s special Act (into which 8 & 9 Vict. c. 20 had been incorporated), which enabled the company to “stop up all streets within the area hereinbefore described.” It was admitted that upon the “said plan” the street in question which the company claimed to be entitled to stop up (Sun Street) was not marked as to be closed, and it was therefore argued that the company were bound by their plan. “But,” said Mellish, L.J., “looking at the private Act, it is difficult to say how plainer words could have been used for the purpose of showing that the company were entitled to stop up this street. . . . The real question to be decided in this case is this, Does the recital in the special Act amount to an express varying of the enactment in the general Act, which says that the arch is to be constructed as delineated on the plan? I am clearly of opinion that it does.”]

The system of incorporation by reference which is in these days adopted in the Statute-book produces some curious results (*n*). In *Gaslight and Coke Co. v. Hardy* (1886), 17 Q. B. D. 619, the Court of Appeal was called upon to construe a repealed section. The question in the case was whether a gas stove let

Incorporation  
by reference.

10 & 11 Vict.  
c. 15.  
23 & 24 Vict.  
c. 125.  
38 & 39 Vict.  
c. 66.

for hire was a "fitting for gas" within sect. 14 of the Gas Works Clauses Act, 1847. That Act is incorporated with, and forms part of, the Metropolitan Gas Act, 1860, and is also incorporated with the special Act (31 & 32 Vict. c. cvi.) of the plaintiff company. Several of the sections of the Act of 1847, including sect. 14, are included in the Statute Law Revision Act, 1875, and are thereby "repealed except so far as incorporated with special Acts to which 34 & 35 Vict. c. 41 does not apply." The last-named Act, sect. 3, was held not to apply to the company's private Act above referred to (o).

Schedules.

8. [To some Acts of Parliament schedules are attached. One of the earliest is that of the Isle of Man Purchase Act, 1765 (5 Geo. 3, c. 26). "A schedule," as Brett, L.J. (p), said in *Att.-Gen. v. Lamplough* (1878), 3 Ex. D. 214, 229, "in an Act is a mere question of drafting, a mere question of words. The schedule is as much a part of the statute, and is as much an enactment, as any other part"], and if it contradicts an earlier clause prevails against it.

Forms in  
schedule.

As a general rule, "forms in schedules," as the Court said in *Bartlett v. Gibbs* (1843), 5 M. & G. 96, "are inserted merely as examples, and are only to be followed implicitly so far as the circumstances of each case may admit"; consequently, [it may sometimes happen that there is a contradiction between the enactment and the form in the schedule. In such a case "it would be," as Lord Penzance said in *Dean v. Green* (1882), 8 P. D. 89, "quite contrary to the recognised principles upon which Courts of law construe Acts of Parliament to . . . restrain the operation of an enactment by any reference to the words of a mere form given for convenience' sake in a schedule." This was well put by Lord Denman, C.J., in *R. v. Baines* (1840), 12 A. & E. 210, 226. "It was argued," said he, "that the form of the *significavit* itself, as given in the schedule, proves that the judge, *i.e.* the bishop, is the only person who ought to certify, as 'by divine providence' is a form that can only apply to a bishop. . . . Such form, although embodied in the Act, cannot be deemed conclusive of a question of this nature; we have also to consider the language of the section to which the schedule is appended, and if there be any contradiction between the two . . . upon ordinary principles, the form, which is made to suit rather the generality of cases than all cases, must give way" (q).]

But in some cases the form is imperative and must be strictly followed, *e.g.* in the case of the Bills of Sale Acts (r), and mort-

(o) *Vide supra*, "Savings," p. 200.

(p) See also *Dale's case* (1881), 6 Q. B. D. 376; *Truax v. Dixon* (1889), 17 Ontario Rep. 366.

(q) In construing a private Act it was held in Scotland that the schedule could not be construed to enlarge the Act: *Laird v. Clyde Navigation Trustees* (1879), 6 Rettie (Sc.), 756; and see *Gemmell v. Garland* (1886), 12 Ont. Rep. 139.

(r) *Saunders v. White*, (1902) 1 K. B. 472 (C. A.).

gages under the Merchant Shipping Act, 1894 (57 & 58 Vict. c. 60), s. 31 (s).

In *Ex parte Board of Trade, In re Norman*, (1893) 2 Q. B. 369, an unsuccessful attempt was made to show that the Bankruptcy Act, 1890, was retrospective by reference to rules and forms made under the Deeds of Arrangement Rules, 1890.

In *Wing v. Epsom U. D. C.*, (1904) 1 K. B. 798, an attempt equally unsuccessful was made to construe Sched. IV. (c) of the Public Health Act, 1875 (38 & 39 Vict. c. 55), by the Summary Jurisdiction Rules, 1886, and the forms given therein.

(s) *Liverpool Borough Bank v. Turner* (1861), 30 L. J. Ch. 379.

## PART II.

### *EFFECT AND OPERATION OF STATUTES.*

#### CHAPTER I.

##### EFFECT OF STATUTES CREATING DUTIES.

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Liability incurred by neglect to perform statutory duties.

1. [VERY many statutes are passed to create duties performable either by certain particular individuals indicated by the statute, or by any persons who bring themselves within the operation of the statute; and questions often arise as to what liability is incurred by neglect to perform statutory duties.]

When a statute creates a duty, one of the first questions for judicial consideration is what is the sanction for breach, or the mode for compelling the performance, of the duty? This question usually resolves itself into the inquiry whether the Act is mandatory or directory. If it be directory, the Courts cannot

interfere to compel performance or punish breach of the duty, and disobedience to the Act does not entail any invalidity (a). If the Act be mandatory, disobedience entails legal consequences, which may fall under the heads of public and private remedies in courts of justice, or the avoidance of some contract, instrument, or document without the intervention of any Court.

Where, in a statute creating a duty, no special remedy is prescribed for compelling performance of the duty or punishing its neglect, the Courts will, as a general rule, presume that the appropriate common law remedy by indictment, mandamus, or action was intended to apply. "The general rule of law (? of construction) is that where a general obligation is created by statute and a specific statutory remedy is provided, that statutory remedy is the only remedy" (b).

Even where the statute creating the duty also provides a special remedy for its enforcement, the common law remedies (of indictment, information by the Attorney-General, mandamus, or action according to the subject-matter) are in many cases available cumulatively or alternatively to the special remedy contained in the statute. Whether they are so or not is upon each statute a question of construction.

(a) [As a general rule, a person who neglects to perform a statutory duty or disobeys a statutory prohibition is guilty of misdemeanour, and is liable to be proceeded against by indictment] if the duty is public (c), and it is no defence to contend that it is more for the public benefit to disobey than to obey the statute (d). Charles, J., in *R. v. Hall*, (1891) 1 Q. B. 747, 753 (e), adopted, as the principle which should govern a case of this description, the rule stated in Hawkins' Pleas of the Crown, book 2, ch. 25, s. 4. The passage is as follows: "It seems to be a good general ground, that wherever a statute prohibits a matter of public grievance to the liberties and security of a subject, or commands a matter of public convenience, as the repairing of the common streets of a town, an offender against such statute is punishable, not only at the suit of the party aggrieved, but also by way of indictment for his contempt of the statute, *unless such method of proceeding do manifestly appear to be excluded by it*" (f). "Yet, if the party offending have been

Liability to indictment.

(a) *Vide infra*, p. 219.

(b) *Institute of Patent Agents v. Lockwood*, (1894) A. C. 347; *Saunders v. Holborn District Board of Works, &c.*, (1895) 1 Q. B. 64; *Clegg v. Earby Gas Co.*, (1896) 1 Q. B. 592, 595, Wright, J.; *Barracrough v. Brown*, (1897) A. C. 615.

(c) See *R. v. Tyler*, (1891) 2 Q. B. 588, 592, Bowen, L.J.; *Fox v. R.* (1859), 29 L. J. M. C. 54 (Ex. Ch.).

(d) *Att.-Gen. v. L. N. W. R.*, (1900) 1 Q. B. 78, 83, Smith, L.J. Cf. *Att.-Gen. v. G. E. R.* (1879), 11 Ch. D. 449, James, L.J.

(e) Most of the earlier cases are discussed in that judgment at pp. 762—769. *R. v. Hall* was followed in *Saunders v. Holborn D. B. N.*, (1895) 1 Q. B. 64, 69.

(f) In cases relating to the maintenance of highways, whether *ratione tenure*, or at the public expense, it has been held that the remedy for non-repair is by indictment only, and that no action lies in favour of a party

fined to the king in the action brought by the party, as it is said that he may in every action for doing things prohibited by statute, it seems questionable whether he may be afterwards indicted, because that would be to make him liable to a second fine for the same offence. Also where a statute makes a new offence which was in no way prohibited by the common law, and appoints a peculiar manner of proceeding against the offender, as by commitment, or action of debt, or information, &c., without mentioning an indictment, it seems to be settled to this day that it would not maintain an indictment, because the mentioning the other methods of proceeding seems impliedly to exclude that of indictment. Yet it hath been adjudged that if such statute give a recovery by action of debt, bill, plaint, or information, *or otherwise*, it authorises a proceeding by way of indictment. Also, where a statute adds a further penalty for an offence prohibited by the common law, there can be no doubt but that the offender may still be indicted, if the prosecutor think fit, at the common law. And if the indictment for such offence conclude *contra formam statuti*, and cannot be made good as an indictment upon the statute, it seems to be now settled that it may be maintained as an indictment at common law."

52 & 53 Vict.  
c. 63.

The principle laid down in the latter part of this passage has been adopted by Parliament in the Interpretation Act, 1889, s. 33, which provides that where an act or omission constitutes an offence under two or more Acts, or both under an Act and at common law, the offender, unless the contrary intention appears, is liable to be prosecuted and punished under either or any of the Acts or at common law, but is not liable to be punished twice for the same offence. This provision applies to all Acts, public, local, personal, and private. By the contrary intention seems to be meant some repugnancy between the two or more laws or express repeal of the prior law. "Where new created offences are only prohibited by the general prohibitory clause of an Act of Parliament, an indictment will lie; but where there is a prohibitory particular clause specifying only particular remedies, then such particular remedy must be pursued, for otherwise the defendant would be liable to a double prosecution: one upon the general prohibition, and the other upon the particular specific remedy" (g).

The fact that the penalty is annexed to the offence in the clause of the Act creating it, as a general rule excludes any

aggrieved, however clear and special the damage done to him: *Cowley v. Newmarket Local Bd.*, (1891) A. C. 345; *Pictou v. Geldert*, (1893) A. C. 524; *Sydney Municipal Council v. Bourke*, (1895) A. C. 433; *Campbell Davys v. Lloyd*, (1901) 2 Ch. 518, 525, Collins, M.R. But this is an exception to the general rule; see cases above cited and *Oliver v. Horsham Local Board*, (1894) 1 Q. B. 332; and *post*, p. 214.

(g) *R. v. Wright* (1758), 1 Burr. 543, Lord Mansfield. The Int. Act, s. 33, does not affect this opinion. And see *R. v. Tyler*, (1891) 2 Q. B. 588, 592, Bowen, L.J.



remedy other than the special penalty for the mere breach of the duty created by the Act (*h*). But it is not essential for the application of this rule that the offence and penalty should be contained in the same clause. "All that the authorities establish is, that where there is a substantive general prohibition (or command) in one clause, and there is a subsequent clause which prescribes a specific remedy, the remedy by indictment is not excluded" (*i*).

In *R. v. Buchanan* (1846), 8 Q. B. 883, it was held that an indictment lay against a person acting as an attorney without admission in defiance of the express prohibition of sect. 2 of the Solicitors Act, 1843, although sect. 35 of the Act provided a special mode of punishment.

In *For v. R.* (1859), 29 L. J. M. C. 54 (Ex. Ch.), it was held that an indictment lay against a clerk to borough justices for being interested in the prosecution of offenders committed for trial by the borough justices, as he was not liable to the particular penalty specified in sect. 102 of the Municipal Corporations Act, 1835 (5 & 6 Will. 4, c. 76).

Where breach of a statute involves liability to a specified penalty, and even in those cases in which indictment is, without express provision, the remedy for a breach of the statutory duty, it will not lie for the mere breach of the statutory command or prohibition. There must be some improper conduct—something constituting a *mens rea* (*k*).

(b) Whenever a corporation or person, whether filling an office Mandamus. under the Crown or not, has a statutory duty of a public nature, such as to do an act or to make an order (*l*) towards another person, a *mandamus* will lie to compel him or them to perform it, at the suit of any person aggrieved by the refusal to perform it, unless another remedy is clearly indicated by the statute (*m*). This rule does not apply to duties created by charter or royal warrant (*n*). The writ is a high prerogative writ, intended for the purpose of supplying defects of justice. By Magna Charta the Crown is bound neither to deny justice to any man nor to delay any man in justice. Where, therefore, there is no other means of obtaining justice, the writ is granted to enable justice to be done (*o*). But where there is another remedy, equally

(*h*) *Couch v. Steel* (1854), 3 E. & B. 402, Lord Campbell.

(*i*) *R. v. Hall*, (1891) 1 Q. B. 747, at p. 770, Charles, J.

(*k*) *Shoppie v. Nathan*, (1892) 1 Q. B. 245, Collins, J.; and see *post*, Part III. ch. ii.

(*l*) *R. v. Income Tax Commissioners* (1888), 21 Q. B. D. 313, 322. See *R. v. Commissioners of Woods and Forests* (1850), 15 Q. B. 761; *R. v. Leicester Union*, (1899) 2 Q. B. 632.

(*m*) *Pasmore v. Oswaldtwistle U. D. C.*, (1898) A. C. 387. See *Re Barlow* (1861), 30 L. J. Q. B. 271; *R. v. Lambourne Valley Rail. Co.* (1888), 22 Q. B. D. 463; *Smith v. Chorley U. D. C.*, (1897) 1 Q. B. 532, Kennedy, J., and cases there cited.

(*n*) *R. v. Sec. State for War*, (1891) 2 Q. B. 326.

(*o*) *Re Nathan* (1884), 12 Q. B. D. 461, 478, Bowen, L.J.

30 & 31 Vict.  
c. 131.

33 & 34 Vict.  
c. 97.

Equitable  
remedies.

convenient, speedy, beneficial and effectual, a mandamus will not be granted. This is not a rule of law, but a rule regulating the discretion of the Court in granting writs of mandamus; and unless the Court can see clearly that there is another remedy equally convenient, beneficial and effectual, the writ of mandamus will be granted provided the circumstances are such in other respects as to warrant the grant of the writ (*p*). By remedy is meant not a remedy by act of the party, but *remedium juris*, or "some specific legal remedy for a legal right" (*q*). Thus, in *R. v. Registrar of Joint Stock Companies* (1888), 21 Q. B. D. 131, an attempt was made to compel the registrar to file a contract under sect. 25 of the Companies Act, 1867, which he had refused to file on the ground that it was insufficiently stamped, but the application was refused on the ground that another appropriate, convenient, and effectual remedy existed for questioning the legality of the refusal under the Stamp Act, 1870, ss. 18, 19, 20. Consequently, when the statute creating the duty, or any other statute, contains a specific and adequate remedy for the breach, the remedy by mandamus is not available, it being not an ordinary alternative, but a last resort to the prerogative. Mandamus is also granted to compel the discharge by undertakers of duties imposed on them by special Acts (*r*). This is a way of keeping such persons to the terms of their Parliamentary bargains. Mandamus is not granted at the suit of a private person where a particular procedure for obtaining it is indicated by the statutes creating the duty (*s*). But in *R. v. Leicester Union*, (1899) 2 Q. B. 632, it was held that the Court ought to grant a mandamus at the instance of the Local Government Board to compel poor-law guardians to appoint a vaccination officer, though the Local Government Board could, on default of the guardians, have appointed such officer without resorting to the Courts. It is always necessary, on application for a mandamus, to ascertain whether the Legislature has in a statute given a command to which it is the business of the Courts to enforce obedience, or simply a direction, discretion, or counsel of perfection, with which no judicial interference is permissible (*t*).

(*c*) The High Court of Justice, in the exercise of its equitable jurisdiction, will in some cases interfere, by mandatory or other injunction, to restrain the breach, or compel the performance, of a statutory duty. The rule as stated by Farwell, J., in *Stevens v. Chown*, (1901) 1 Ch. 894, 904, is that "there was nothing to

(*p*) *Re Barlow* (1861), 30 L. J. Q. B. 291, Hill, B.; adopted in *R. v. Leicester Union*, (1899) 2 Q. B. 632, 639.

(*q*) *R. v. Archbishop of Canterbury* (1812), 15 East, 117, 136, Ellenborough, C.J.; adopted in *R. v. Leicester Union*, (1891) 2 Q. B. 632, 638.

(*r*) *R. v. L. N. W. R.*, (1899) 1 Q. B. 921.

(*s*) *Pasmore v. Oswaldtwistle U. D. C.*, (1898) A. C. 387.

(*t*) *Re Northam* (1884), 12 Q. B. D. 461, 478; *R. v. Bank of England* (1780), 2 Doug. 524.

prevent the Court of Chancery from granting an injunction to restrain the infringement of a newly created statutory right, unless the Act of Parliament creating the right provided a remedy which it enacted should be the only remedy, subject only to this, that the right was such a right as the Court under its original jurisdiction would take cognizance of."

The willingness of the Court to intervene depends upon the nature of the duty to be performed, and, as a rule, the Court will confine the exercise of this jurisdiction to cases where there is a legal wrong done or threatened as distinct from a neglect to perform the statutory duties (*u*). But the jurisdiction is not limited to cases where an action at law could lie (*x*); and the mere fact that the duty is the creature of a statute, and does not arise from an ordinary contract, will make no difference. A public body, whether it be a municipal corporation or a trading company (*y*), which has statutory powers and is proceeding to exceed its statutory powers or to infringe or disregard express terms introduced into the statute in the interests of the public as a condition of the exercise of the powers, may be restrained by injunction at the suit of the Attorney-General in the absence of any other specific or exclusive remedy; and in certain cases the Attorney-General has been held entitled to intervene to prevent infringement of local by-laws as to new streets or regulations as to the building line (*z*).

The equitable jurisdiction has also in some instances been exercised *ad interim* to prevent irremediable mischief pending the determination of the chief matter in question, even when there is no question to be tried in the High Court, and the matter in dispute is to be determined by some special statutory tribunal to the exclusion of the ordinary Courts (*a*). And where municipal corporations or other public bodies are about to apply public moneys for unauthorised purposes in excess of their statutory powers, there is undoubtedly jurisdiction to interfere by injunction at the suit of the Attorney-General, since in such a case *certiorari* is not an adequate remedy (*b*).

This course was adopted in *Att.-Gen. v. Tynemouth*, (1899) App. Cas. 293, to prevent expenditure of money in opposing

(*u*) *Glossop v. Heston L. B.* (1879), 12 Ch. D. 116, James, L.J.

(*x*) *Emperor of Austria v. Day* (1861), 3 De G. F. & J. 217, 253; *Stevens v. Chown*, (1901) 1 Ch. 894.

(*y*) *London County Council v. Att.-Gen.*, (1902) A. C. 165; *Att.-Gen. v. Manchester Corporation*, (1906) 1 Ch. 643; *Ashbury Carriage Co. v. Riche* (1875), L. R. 7 H. L. 653; *Att.-Gen. v. G. E. R.* (1880), 5 App. Cas. 473; *Att.-Gen. v. Mersey Rail. Co.*, (1906) 1 Ch. 811.

(*z*) *Att.-Gen. v. Ashborne Recreation Ground Co.*, (1903) 1 Ch. 101, Buckley, J.; *Att.-Gen. v. Hatch*, (1893) 3 Ch. 36; *Att.-Gen. v. Rufford*, (1899) 1 Ch. 537; cf. *Devonport Corporation v. Tozer*, (1902) 2 Ch. 182; (1903) 1 Ch. 759 (C. A.).

(*a*) *Hayward v. E. London W. W. Co.* (1884), 28 Ch. D. 138, Chitty, J.; *Stevens v. Chown*, (1901) 1 Ch. 894, 907, Farwell, J.

(*b*) *Att.-Gen. v. Merthyr Tydfil Union*, (1900) 1 Ch. 550, Lindley, M.R., distinguishing *Barracough v. Brown*, (1897) A. C. 623, and *Grand Junction W. W. Co. v. Hampton U. D. C.*, (1898) 2 Ch. 331.

the renewal of licences to sell liquor; and in *L. C. C. v. Att.-Gen.*, (1902) App. Cas. 165, and *Att.-Gen. v. Manchester Corporation*, (1906) 1 Ch. 643, to prevent the unauthorised running of omnibuses and carriage of parcels as aids or adjuncts to an authorised municipal tramway service.

In the case of statutory commercial companies it is said that the business of the Courts is to "keep the undertakers within their Acts" (c). In the case of public bodies the rights of the ratepayers are primarily affected. It is not necessary to prove that the contravention of the statute has been or will be attended by any public inconvenience. Nor is it an answer to show that the act done is also a misdemeanor or an offence punishable on summary conviction (d).

Injunctions are often granted against local authorities at the suit of private persons in respect of their acts and defaults in carrying out statutory duties (e), but, as a rule, the proper remedy is by mandamus or action by the Attorney-General (R. S. C. Ord. I. r. 1), instead of the private remedy (f). And it is always necessary to see whether the statutes creating the duty limit a particular remedy for failure to perform it (g).

In cases where notice of action was necessary to entitle an individual to damages for neglect by a corporation of a statutory duty, he might, by application for an injunction in a proper case, get rid of the necessity of giving the notice, both shaking off the statutory fetter and utilising a remedy not specified in the statute (h).

When action  
lies for breach  
of statutory  
duty.

(d) In *Wolverhampton New W. W. Co. v. Hawkesford* (1859), 29 L. J. M. C. 242, 246, Willes, J., said: "There are three classes of cases in which liability may be established by statute. 1. There is that class where there is a liability existing at common law which is only remedied by the statute with a special form of remedy: thus, unless the statute contains words expressly excluding the common law remedy, the plaintiff has his election of proceeding either under the statute or at common law. 2. Then there is a second class, which consists of those cases in which a statute has created a liability but has given no special remedy for it: thus the party may adopt an action of

(c) *Goldie v. Oswald* (1814), 2 Dow. (H. L.) 534; 3 Eng. Rep. 957; *Barnet v. Knowles* (1815), 3 Dow. (H. L.) 280; 3 Eng. Rep. 1060.

(d) *Att.-Gen. v. L. N. W. R.*, (1900) 1 Q. B. 78 (C. A.), and cases there cited; *Att.-Gen. v. Ashborne Recreation Ground Co.*, (1903) 1 Ch. 101, Buckley, J.

(e) *Att.-Gen. v. Merthyr Tydfil Union*, (1900) 1 Ch. 550, Lindley, M.R.; distinguishing *Barracough v. Brown*, (1897) A. C. 623; and *Grand Junction Waterworks Co. v. Hampton Urban District Council*, (1898) 2 Ch. 331.

(f) See *Glossop v. Heston L. B.* (1879), 12 Ch. D. 102, 115, James, L.J.; *Att.-Gen. v. L. N. W. R.*, *ubi sup.*

(g) *Pasmore v. Oswaldtwistle U. D. C.*, (1898) A. C. 387.

(h) *Chapman v. Auckland Union (Guardians of)* (1889), 23 Q. B. D. 294; *Rendall v. Blair* (1890), 45 Ch. D. 139, 157. See *ante*, p. 100: *Johnston v. Consumers' Gas Co. of Toronto*, (1893) A. C. 447, 459, Lord Macnaghten; *Bathurst Borough v. Macpherson* (1879), 4 App. Cas. 256, 268.

debt or other remedy at common law to enforce it (i). 3. The third class is where a statute creates a liability not existing at common law, and gives also a particular remedy for enforcing it. . . . With respect to that class it has always been held that the party must adopt the form of remedy given by the statute."

[The question whether an individual who is one of a class for whose benefit such an obligation is imposed can or cannot enforce performance by an action must depend, to use Lord Cairns's words in *Atkinson v. Newcastle W. W. Co.* (1877), 2 Ex. D. 441, 448, "on the purview of the Legislature in the particular statute, and upon the language which they have there employed." It is especially so when the Act in question is not an Act of public or general policy, but as rather in the nature of a private legislative bargain with a body of undertakers, incorporated for purposes which Parliament considers of public or general utility (k). The Statute of Westminster the Second (13 Edw. 1), c. 50, gave a remedy by action on the case to all who are aggrieved by the neglect of any duty created by statute, and it is laid down in Comyns (Digest, tit. "Action upon Statute," F.), "that in every case where a statute enacts or prohibits a thing for the benefit of a person, he shall have a remedy upon the same statute for the thing enacted for his advantage, or for the recompense of a wrong done to him contrary to the said law." Upon these authorities it was stated in *Couch v. Steel* (1854), 23 L. J. Q. B. 125, as a broad general proposition, that wherever a statutory duty is created, any person who can show that he has sustained injuries from the non-performance of that duty can bring an action for damages against the person on whom the duty is imposed. But this proposition was not accepted as good law by the Court of Appeal in *Atkinson v. Newcastle W. W. Co.* (1877), 2 Ex. D. 441 (l). In the latter case the defendants by their private Act had engaged to keep the pipes to which fire-plugs were fixed charged with water at a certain fixed pressure. In consequence of their neglecting to do this, a fire which had broken out upon the premises of the plaintiff could not be extinguished, and the premises were burnt down. Sect. 43 of the Waterworks Clauses Act, 1847, which was incorporated with the private Act of the defendants, provides that for neglecting to keep the fire-plugs properly charged with water the defendants shall be liable to a penalty, part of which is to go to the person aggrieved by the neglect. "It was no part of the scheme of

10 & 11 Vict.  
c. 17.

(i) In such a case the common law will, in general, give a remedy suited to the particular nature of the case: *Doe d. Bishop of Rochester v. Bridges* (1831), 1 B. & Ad. 847, 859, Tenterden, L. C. J.; *and see in Prynne v. Oswaldtwistle U. D. C.*, (1898) A. C. 387; and see *Devonport v. F.* . . . &c. *Tramways Co.* (1884), 52 L. T. 161, 164.

(k) *Att.-Gen. v. Teddington*, (1898) 1 Ch. 66; *Att.-Gen. v. Swansea*, (1898) 1 Ch. 602; *Att.-Gen. v. Tynemouth*, (1899) A. C. 293.

(l) Approved on this point in *Cowley v. Newmarket Local Board*, (1892) A. C. 345.

this Act," said Lord Cairns (at p. 446), "to create any duty which was to become the subject of an action at the suit of individuals, to create any right in individuals with a power of enforcing that right by action, but its scheme was, having laid down certain duties, to provide guarantees for the due fulfilment of them, and in certain cases to give the penalties, or some of them, to the persons injured." Consequently it was held, as Cockburn, C.J., put it (at p. 449), that "this particular Act did not by implication give to persons who have been injured by the breach of the duties thereby imposed, any remedy over and above those which it gives in express terms," and that a person so injured could not maintain an action for damages.]

Action against public bodies for failure to perform statutory duty.

In the case of duties imposed by statute on a public body a distinction is drawn between nonfeasance and misfeasance, and it is said that while no action will lie for not doing the duty, an action will lie for particular injuries occasioned by misfeasance. It has already been stated (*ante*, p. 207, note (f)) as a well-established rule that no action by the individual lies for damage which he has suffered by non-repair of a highway, and as a general rule the remedy in case of nonfeasance as to a public duty is by indictment or prerogative mandamus (*m*), unless the duty is clearly to the individual and the nonfeasance is due to negligence (*n*); misfeasance is in substance equivalent to negligence on the execution of the statutory duty.

The proper canon of construction "is that, in the absence of something to show a contrary intention, the Legislature intends that the body, the creature of statute, shall have the same duties, and that its funds shall be subject to the same liabilities, as the general law would impose on a private person doing the same thing" (*o*).

It is often difficult to draw the line between misfeasance and nonfeasance, and the question of action or no action must often be answered by reference to the particular wording of the statute involved. In *Maquire v. Liverpool Corporation*, (1905) 1 K. B. 767, an action was held not to lie for injuries to a horse caused by non-repair of roads transferred to a municipal corporation by a local Act which made them surveyors of highways. In *Whyler v. Bingham R. D. C.*, (1901) 1 K. B. 45, an action was held to lie against a highway authority which had removed a fence erected by its predecessor for the protection of the public at a dangerous part on the highway. In *Earl of Harrington v. Derby Corporation*, (1905) 1 Ch. 205, a case arising out of the pollution of a river by the sewage of the

(*m*) *Smith v. Chorley U. D. C.*, (1897) 1 Q. B. 532.

(*n*) *Gibraltar Sanitary Commissioners v. Orfila* (1890), 15 App. Cas. 400.

(*o*) *The Mersey Docks and Harbour Board v. Gibbs* (1865), L. R. 1 H. L. 93, 110, Blackburn, J.; cf. *The Bearn*, (1906) P. 48, 62, Deane, J., a case as to alleged defaults by a statutory harbour authority.

town of Derby, an action was held not to lie against the defendants for nonfeasance or breach of duty under the Public Health Acts (*p*), but to lie against them in respect of certain acts which they had done, resulting in injury to the house and fishing rights of the plaintiffs. In *Bull v. Shoreditch Corporation* (1902), 67 J. P. 37 (*q*), it was held that a highway authority was guilty of misfeasance in throwing open a highway when it was not fit for traffic, owing to the imperfect filling in at one point of a trench made by them as sewer authority, and at another point owing to the presence (to the knowledge of the corporation) of a heap of rubbish wrongfully shot on the road by a third person. Collins, M.R., said: "That the making of the trench necessarily involved putting the road during the process of laying the sewer into a foundrous condition, and that clearly would be an act done, not an act of nonfeasance, and therefore having once initiated this procedure by putting in the trench, the defendants were in the position of misfeasors, *i.e.*, they were, it may be for the best of reasons, making this road foundrous and impassable . . . according to my opinion, their liability as misfeasors remained until they had put the road back into such a condition as to be reasonably fit for traffic. Then, and not till then, were they relieved from the position of misfeasors, with all the liabilities attaching thereto. They could not, in my judgment, whether in their united capacity of highway and sewer authority or in their separate capacity of either of these two, see the road which they themselves had exclusively made impassable, and sit by and say . . . that they were lookers on, and therefore in the position of nonfeasors, not misfeasors."

[In deciding whether an action will lie for the breach of a duty imposed by statute, it is necessary to consider whether the duty is merely a ministerial one, or is of a discretionary or quasi-judicial nature. It is clear that an action will lie for the neglect of a duty of the former kind, but the question often arises as to which class a duty belongs. Thus, in *Schinotti v. Bumsted* (1796), 6 T. R. 646, it was held that a commissioner of a lottery was a mere ministerial officer, and that, consequently, an action would lie against him for not adjudging the lottery prize to the person entitled to receive it. Similarly, in *Barry v. Arnaud* (1839), 10 A. & E. 646, a collector of customs was held to be a public officer whose functions were ministerial, and that he was therefore liable in an action for nonfeasance in the exercise of his duty. On the other hand, if the duty to be performed is judicial or even quasi-judicial, it is clear that no action will lie for the breach of it, unless the breach is shown to be wilful and

Action will lie for neglect of ministerial but not of judicial duty.

(*p*) The remedy was said to be by complaint to the Local Government Board under 38 & 39 Vict. c. 55, s. 29: cf. *Robinson v. Workington Corporation*, (1897) 1 Q. B. 619 (C. A.)

(*q*) Cf. *Thompson v. Brighton Corporation*, (1894) 1 Q. B. 432.

malicious. Thus, in *Tozer v. Child* (1857), 26 L. J. Q. B. 151, it appeared that the defendants, who were acting as returning officers, had refused to receive the plaintiff's vote for four candidates for the office of vestrymen. "The defendants," said the Court, "are quasi-judges. They had to exercise an opinion upon the matter whether the plaintiff was entitled to vote or not. Having decided against the plaintiff, without malice or any improper motive, it would be monstrous to subject them to an action" (r).]

Damage sustained must be such as statute was intended to prevent.

32 & 33 Vict.  
c. 70.

[But if it appears from the language of the enactment that it is the intention of the Legislature that an action should lie for damage sustained by reason of neglect to perform some duty created by the statute in question, it will still, in order to maintain an action, be necessary to prove that the damage or loss was of such a character as it was the direct object of the statute to prevent. Thus, in *Gorris v. Scott* (1874), L. R. 9 Ex. 125, an action was brought by an owner of sheep against a shipowner who had undertaken to carry the plaintiff's sheep from a foreign port to England, because the defendant had neglected to do certain things enjoined by a Privy Council Order made under the authority of the Contagious Diseases (Animals) Act, 1869, s. 75, in consequence of which neglect some of the sheep were washed overboard. It appeared that the object of the Act was to prevent the spread of disease among animals, and not to protect them against the perils of the sea; consequently, the Court held that no action could be maintained. "The Act," said Pollock, B., "was passed *alio intuitu* . . . the precautions directed may be useful and advantageous for preventing animals from being washed overboard, but they were never intended for that purpose, and a loss of that kind caused by their neglect cannot give a cause of action." So, in *Buxton v. North-Eastern Rail. Co.* (1868), L. R. 3 Q. B. 549, it appeared that in consequence of the neglect of the railway company to keep up their fence in accordance with the provisions of 8 & 9 Vict. c. 20, s. 68, a bullock got on to the line and caused an accident in which the plaintiff sustained damage; but it was held that he had no right of action on account of this neglect on the part of the defendants to perform their statutory duty, because the statutory obligation was created solely with regard to, and for the benefit of, the owners and occupiers of the adjoining lands, and therefore that "the obligation, as to their passengers, to fence, is not imposed upon the company by that enactment." In *Johnson v. Consumers' Gas Company of Toronto*, (1898) App. Cas. 447, it was held that the special Act constituting the company did not give a cause of action to consumers complaining of overcharge, and that the sole remedy lay in the statutory right of the

(r) See also *Partridge v. General Medical Council* (1890), 25 Q. B. D. 90; *Royal Aquarium v. Parkinson*, (1892) 1 Q. B. 431.



municipality of Toronto to investigate and check the accounts of the gas company, and in the event of disobedience by the company to the statute to take action against them on behalf of the public. The canon applicable is thus stated by Wills, J., in *Clegg v. Earby Gas Co.*, (1896) 1 Q. B. 592, 594: "Where there is an obligation created by statute to do something for the benefit of the public generally, or of such a large body of persons that they can only be dealt with practically *en masse*, as it were, and where the failure to comply with the statutory obligation is liable to affect all such persons in the like manner, although not necessarily in the same degree, there is no separate right of action to every person injured by breach of the obligation in no other manner than the rest of the public."

In order to succeed in an action for injuries consequent on disobedience to a statute it is usually necessary to prove more than the mere breach of the statute. By sect. 22 of the Railways Regulation Act, 1868, it is enacted that "every railway company shall provide in every train which carries passengers and travels more than twenty miles without stopping" a means of communication between the passengers and the guard. In *Blamires v. L. & Y. Rail. Co.* (1873), L. R. 8 Ex. 283, the plaintiff sued the company for injuries received in a railway accident, which (as he alleged) arose from the negligence of the company, and in proof of the charge of negligence it was given in evidence that the company had not complied with the provisions of the Act as to supplying a communication between the passengers and the guard. Kelly, C.B., told the jury that "it is not every disobedience to an Act of Parliament that will constitute negligence . . . it is only if the duty (s) imposed by the Act be such that the neglect of it was likely to conduce to an accident such as that which had occurred." This ruling was upheld by the Exchequer Chamber, and in giving his judgment, Brett, J., said as follows: "It is right to use the Act as some evidence of what is due and ordinary care under the circumstances of the case, and that is the way the Chief Baron directed the jury to use it" (t). In *Groves v. Lord Wimborne*, (1898) 2 Q. B. 402, it was held by the Court of Appeal that on failure to perform an absolute statutory duty followed by injury an action lay without alleging or proving negligence; but the duty there left unperformed was to fence dangerous machinery in a factory.

How far  
negligence  
inferred from  
breach of  
statute.  
31 & 32 Vict.  
c. 119.

(s) Where an Act merely empowers a railway company to do something which it is entirely within their discretion whether they do or not, as, for instance, when a company are empowered by Act of Parliament to discontinue a local occupation road, the non-performance of this may not be used as evidence against the company to prove negligence which occurred at the level crossing arose from their negligence: *Cliff v. Midland Rail. Co.* (1870), L. R. 5 Q. B. 258. See Beven, *Negligence* (2nd ed.), 145, n.

(t) This case was distinguished in *Gorris v. Scott*, ante, p. 216, and followed in *Baddley v. Earl Granville* (1887), 19 Q. B. D. 423, where one of the rules under the Coal Mines Regulation Act, 1872, had been disobeyed. This decision is criticised by Mr. Beven, *Employers' Liability* (ed. 1902), 18, n.

Usually good  
defence that  
reasonable  
care has been  
taken to per-  
form duty.

18 & 19 Vict.  
c. 120.

When non-  
performance  
of statutory  
duty is ex-  
cused by act  
of God.

[If a duty is imposed by the Legislature upon a public body, as a general rule, if they exercise due and reasonable care as to the performance of the duty, they will not be held liable if for some reason or other it becomes impossible for them to discharge the duty.] In other words, the duty is not absolute: [and as Cockburn, C.J., said in *Re Bristol, &c. Railway Company* (1877), 3 Q. B. D. 10—13, “it would be contrary to the elementary principles of justice to enforce by mandamus a [statutory] order which imposes a duty which it is impossible to discharge.” In *Hammond v. St. Pancras* (1874), L. R. 9 C. P. 316, the vestry of St. Pancras had the duty cast upon them by sect. 72 of the Metropolis Management Act, 1855, of properly cleaning the sewers vested in them by the Act. One of these sewers overflowed into the plaintiff’s cellar in consequence of an obstruction in the sewer which was unknown to the defendants, and could not by the exercise of reasonable care or inquiry have been known to them. The question then arose as to whether the defendants were liable for the damage done by the overflow of the sewer, and it was held that they were not liable. “It would seem to me,” said Brett, J., “to be contrary to natural justice to say that Parliament intended to impose upon a public body a liability for a thing which no reasonable care or skill could obviate. The duty, notwithstanding, may be absolute, but if so, it ought to be imposed in the clearest possible terms.” And Denman, J., added, “Under sect. 72 it clearly was not intended to render them liable to an action if, in the exercise of their duties, they are guilty of no negligence” (*u*).] But occasionally the duty imposed is held to be absolute, as in *Holborn Union v. Shore-ditch Vestry* (1876), 2 Q. B. D. 145, and *Groves v. Lord Wimborne* (*ante*, p. 217).

As a general rule, if a duty is cast upon a person by statute, “he is excused,” said the Court in *R. v. Leicestershire* (1850), 15 Q. B. 92, “from performing that duty by its becoming impossible by the act of God.” But if a statutory duty arises out of a particular state of circumstances which have been brought about by the act of God, the fact that that state of circumstances was so brought about will not be an answer to an action for the non-performance of the statutory duty. [This question was considerably discussed in *Wear River Commissioners v. Adamson* (1877), 2 App. Cas. 743. “The Court of Appeal,” said Lord Cairns, “has been of opinion that the damage was occasioned by a *vis major*, namely, by the act of God in the violence of the tempest. Founding himself on this, the Master of the Rolls states that it is a familiar maxim of law that where there is a duty imposed . . . as a general rule there is no such duty required to be performed where the event happens through the act of God or the Queen’s enemies, and his opinion is that

(*u*) See *Re Richmond Gas Co. v. Richmond Corporation*, (1893) 1 Q. B. 56.

the Court may well come to the conclusion that the act of God and the Queen's enemies were not meant to be comprised within the first words of 10 & 11 Vict. c. 27, s. 74 [which enacts that 'the owner of every vessel shall be answerable . . . for any damage done by such vessel to the harbour, dock, or pier'"]. The Lord Chief Baron states that no man can be answerable, unless by express contract, for any mischief or injury occasioned by the act of God. Mellish, L.J., states that the act of God does not impose any liability on anybody. Denman, J., states that in every Act of Parliament words are not to be construed to impose a liability for an act done, if the act be substantially caused by a superior power, such as the law calls the act of God. "In my opinion," continued Lord Cairns, "these expressions are broader than is warranted by any authorities of which I am aware. If a duty is cast upon an individual by common law, the act of God will excuse him from the performance of that duty. No man is compelled to do that which is impossible. . . . If, however, an Act of Parliament declares that a man shall be liable for the damage occasioned by a particular state of circumstances, I know of no reason why a man should not be liable for the damage occasioned by that state of circumstances, whether the state of circumstances is brought about by the act of man or by the act of God."]

2. [If a statute creates a new duty or imposes a new liability, and prescribes a specific remedy (x) in case of neglect to perform the duty or discharge the liability, the general rule (y) is, as Denison, J., said in *Stevens v. Evans* (1761), 2 Burr. 1152, 1157, "that no remedy can be taken but the particular remedy prescribed by the statute." "Where an Act creates an obligation," said the Court in *Doe d. Bishop of Rochester v. Bridges* (1831), 1 B. & Ad. 847, 859, "and enforces the performance in a specific manner, we take it to be a general rule that performance cannot be enforced in any other manner" (z). And in *Stevens v. Jeacocke* (1848), 11 Q. B. 731, 741, the same Court said: "It is a rule of law that an action will not lie for the infringement of a right created by statute, where another specific remedy for infringement is provided by the same statute." And in *R. v. County Court Judge of Essex* (1887), 18 Q. B. D. 704, Lord Esher, M.R. (at p. 707), said, with reference to the question whether a county court judgment debt carried interest under 1 & 2 Vict. c. 110, s. 17: "The ordinary rule of construction applies to this case, that where the Legislature has passed a new statute giving a new remedy, that remedy is the only one which can be pursued."]

If specific remedy given for neglect of new statutory duty, no other remedy available.

In *Barracough v. Brown*, (1897) App. Cas. 615, the question

(x) As to criminal remedies, *vide ante*, p. 207.

(y) See *Wake v. Mayor of Sheffield* (1884), 12 Q. B. D. 145.

(z) Adopted in *Pasmore v. Oswaldtwistle U. D. C.*, (1898) A. C. 387, 394, Halsbury, L.C.

raised was whether a right of action for a declaration of a right to certain expenses would lie on a statute which gave a new right to recover certain expenses in a Court of Summary Jurisdiction from persons not otherwise liable. Lord Watson said (p. 622): "The right and the remedy are given *uno flatu*, and one cannot be dissociated from the other. By these words the Legislature has, in my opinion, committed to the Summary Court exclusive jurisdiction, not merely to assess the amount of expenses to be repaid to the undertaker, but to determine by whom the amount is payable, and has therefore by plain implication enacted that no other Court has any authority to entertain or decide these matters. The objection is one which, in my opinion, it is *pars judicis* to notice, because it arises on the face of the enactment which your lordships are asked to enforce in this appeal. It cannot be the duty of any Court to pronounce an order, when it plainly appears that in so doing the Court would be using a jurisdiction which the Legislature has forbidden it to exercise" (a).

In accordance with this rule it has been decided that where a statute provides for the settlement of disputes of classes therein indicated by arbitration, the jurisdiction of the Courts to determine such disputes by action is ousted, and the statutory procedure alone can be followed (b), and where a new right is given and a particular Court is indicated for its enforcement the High Court's jurisdiction is ousted (c).

17 & 18 Vict.  
c. 104.

The true rule for ascertaining whether the special remedy does or does not include a right of action is laid down in *Vallance v. Falle* (1884), 13 Q. B. D. 109. In that case the question was whether an action would lie for refusing to give the discharge directed by sect. 172 of the Merchant Shipping Act, 1854, to be given by the master of a ship to his seamen. The section in question imposes a penalty of 10% for withholding the certificate. Stephen, J., said, at p. 110: "The case has been argued with great care, and various authorities on the subject have been cited. The general rule to be deduced from them seems in substance to be, that the provisions and object of the particular enactment must be looked at in order to discover whether it was intended to confer a general right which might be the subject of an action, or to create a duty sanctioned only

(a) In the past the Chancery Division has been disposed somewhat readily to assume the existence of a jurisdiction concurrent with that of justices. In *Grand Junction W. v. Hampton Urban District Council*, (1898) 2 Ch. 331, Stirling, J., pointed out that even assuming jurisdiction, the Court would not interfere by injunction or declaration of right save in special circumstances. See, however, *Stevens v. Chown*, (1901) 2 Ch. 894, Farwell, J., *ante*, p. 210.

(b) *Norwich Corporation v. Norwich Electric Tramway Co.*, (1906) 2 K. B. 119, C. A., on sect. 33 of the Tramways Act, 1870. Cf. *Crosfield v. Manchester Ship Canal Co.*, (1905) A. C. 421.

(c) See *Horner v. Franklin*, (1905) 1 K. B. 479, decided on sect. 7 of the Factory Act, 1891 (means of escape from fire), and *Stuckey v. Hooke*, (1906) 2 K. B. 20, C. A., decided on sect. 101 of the Factory Act, 1901 (bakehouses).

by a particular penalty, in which case the only remedy for breach of the duty would be by proceedings for the penalty" (d). And later in his judgment he added (at p. 112), "I do not wish to say anything against the general rules that have been laid down for the construction of statutes in relation to the question whether a penalty is intended to be the only remedy for breach of statutory duty, but I always think that, after all, the best way of finding out the meaning of a statute is to read it, and see what it means."

[But if a statute which creates a duty enacts that an action may be brought by a common informer in case of neglect to perform the statutory duty, this power of suing for a penalty is not to be treated as taking away the right which a person may otherwise have to bring an action for any special damage which he may have sustained by reason of the neglect to perform the statutory duty. And one reason for this is, as was pointed out by Lord Chelmsford in *Wilson v. Merry* (1868), L. R. 1 H. L. (Sc.) 326, 341, that "the two proceedings [viz. for the penalty, and by action for civil remedy] have totally different objects, the one to punish an offence, the other to remedy an injury."

But right to sue for a penalty does not take away right to bring action for neglect of duty.

Brett, L.J., in *Atkinson v. Newcastle Waterworks* (1877), 2 Ex. D. 449, pointed out that it makes no difference whether a penalty imposed for the breach of a statutory duty is or is not to go to the person aggrieved. "I entertain," said he, "the strongest doubt whether the broad rule can be maintained that, where a new duty is created by statute, and a penalty is imposed for its breach, which penalty is to go to the person injured by such breach, the penalty, however small and inadequate a compensation it may be, is in such a case to be regarded as indicating an intention on the part of the Legislature that there should be no action by such person for damages, but that where a similar duty is created, and a similar penalty imposed, which is not to go to the person injured, then the intention is that he is to have a right of action" (e).]

3. "There is a numerous class of cases in which it has been held that certain provisions in Acts of Parliament are directory in the sense that they were not meant to be a condition precedent to the grant, or whatever it may be, but a condition subsequent: a condition as to which the responsible persons may be blamable and punishable if they do not act upon it, but their not acting upon it shall not invalidate what they have done, these persons having nothing to do with that" (f).

Rule as to statutes creating duties being directory only.

["It is stated," said Denman, J., in *Caldow v. Pixell* (1877), 2 C. P. D. 562, 566, "that in general the provisions of statutes

(d) Cf. *Saunders v. Holborn District Board*, (1895) 1 Q. B. 64.

(e) *Couch v. Steel* (1854), 23 L. J. Q. B. 121, 3 E. & B. 402, so far as it is an authority to the contrary, is virtually overruled by this case and by *Cowley v. Newmarket Local Board*, (1892) A. C. 345, 352.

(f) *Middlesex Justices v. R.* (1884), 9 App. Cas. 778, Lord Blackburn.

creating duties are directory." By this is meant, not that it is optional on the part of a public functionary whether he will perform duties imposed upon him by statute (*g*), but that if a public functionary neglects to perform a statutory duty, that neglect on his part will not necessarily invalidate the whole operation with regard to which the statutory duty had to be performed. The case last cited turned upon 34 & 35 Vict. c. 43, s. 29, by which it is enacted that "within three months after the avoidance of any benefice . . . the bishop shall direct the surveyor, who shall inspect the buildings of such benefice, and report to the bishop what sum, if any, is required to make good the dilapidations." The bishop neglected to give the necessary directions for inspection and report until after the expiration of three months from the avoidance of the benefice, and it was therefore argued that, as the statute had not been complied with, the order, when made, was invalid, and that dilapidations could not be sued for by the new incumbent. The Court, however, held otherwise. "The statute," said the Court, "imposes a public duty upon the bishop; it does not create a power or privilege for the benefit of the new incumbent as a private person. The bishop, probably from inadvertence, failed to give the direction within the specified time, but, as this was an omission to perform a public duty, we think we ought to hold this statute to be directory." At the same time it must be borne in mind that it is not a universal rule that statutes which create public duties are merely directory. "In the absence of an express provision, the intention of the Legislature is to be ascertained by weighing the consequences of holding a statute to be directory or imperative" (*h*). It is enacted by 6 & 7 Vict. c. 18, s. 100, that any one who objects to a person's name being retained upon the list of voters must send his notice of objection by post directed to the person objected to "at his place of abode as described in the said list of voters." In *Noseworthy v. Buckland Overseers* (1873), L. R. 9 C. P. 233, it appeared that the overseers, finding an incorrect address in "the said list of voters," altered it by substituting the true address, and so published it; consequently, the objector, who copied from the published list the address of the person he objected to, directed his notice of objection to the substituted address. It was argued that the enactment was imperative, and that, as the notice of objection had not been sent to the address specified in the statute, the notice was invalid, and it was so held by the Court. "It is the duty of the overseers," said Keating, J., "to publish the list in its integrity just as they receive it, and . . . if instead of publishing the copy as they receive it, the overseers

(*g*) *Vide ante*, p. 62; and *R. v. Mayor of Rochester* (1858), 27 L. J. Q. B. 47; Lord Campbell.

(*h*) *Loc. cit.*, at p. 566, Denman, J.

take upon themselves to alter it, a person acting upon it does so at his peril. . . . The words of the Act are express.”]

4. [One of the most important effects of statutes which create duties or impose obligations (whether it be an obligation to do or to refrain from doing some particular thing) is that a contract which involves in its performance, either directly or collaterally (*i*), the doing of something which would be in contravention of a statute of this kind is held to be invalid and unenforceable (*k*). This is expressed by the legal maxim, *A pactis privatorum publico juri non derogatur* (*l*), and also in the following rule:—“Where a contract, express or implied, is expressly or by implication forbidden by statute, no Court will lend its assistance to give it effect” (*m*). “What is done,” said Lord Ellenborough in *Langton v. Hughes* (1813), 1 M. & S. 593, at p. 596, “in contravention of the provisions of an Act of Parliament cannot be made the subject of an action.” This principle has been acted upon in many cases. It was held in *Chugas v. Penaluna* (1791), 4 T. R. 466, that a smuggling contract cannot be sued upon, because of the obligation created by statute to pay import duty on certain articles. So, also, it being required by 10 Geo. 2, c. 28 (*n*), that proprietors of theatres should obtain a licence, it was held in *Gallini v. Laborie* (1793), 5 T. R. 242, that no action could be maintained for breach of an agreement to dance at an unlicensed theatre. Similarly, it being a duty created by 39 & 40 Geo. 3, c. 99, s. 23, that any persons who carry on the trade of a pawnbroker shall cause their name to be painted over their place of business, it was held in *Gordon v. Howden* (1845), 12 Cl. & F. 243, that an agreement constituting a secret partnership between pawnbrokers was void as being in contravention of that statute. And again, it being a duty created by 7 & 8 Will. 3, c. 4, to abstain from treating electors after the teste of the writ for the election, it was held in *Ribbans v. Crickett* (1798), 1 B. & P. 264, that an innkeeper

Contract void if in contravention of statute creating duty.

(*i*) [Thus, a policy on an illegal voyage cannot be enforced, “for it would be singular if, the original contract being invalid, and therefore incapable of being enforced, a collateral contract founded upon it could be enforced”: *Redmond v. Smith* (1844), 7 M. & G. 457, 474, Tindal, C.J.]

(*k*) [The general principle that “illegality may be pleaded as a defence to an action,” whether that illegality arise either from the breach of some statutory provision or of a common law principle, was laid down in the leading case of *Collins v. Blanton* (1767), 1 Smith, L. C. (10th ed.) 355, and is fully discussed in the notes to that case. See also Williams’ notes to Saunders (ed. 1871), vol. i. p. 517, note (*c*).]

(*l*) [In commenting upon this maxim Dr. Lushington, *arguendo*, said in *Phillips v. Innes* (1837), 4 Cl. & F. at p. 241, as follows: “It is impossible to compel one who is unwilling to disobey the law to contravene it. He is entitled to plead freedom from a compact in which he should never have entered, and to be protected in maintaining an obedience to the law, which the law itself would have interposed to enforce if the Act had come otherwise within its cognisance.”]

(*m*) *Melliss v. Shirley L. B.* (1885), 16 Q. B. D. 446; *Cowan v. Milburn* (1867), L. R. 2 Ex. 230, 233, Bramwell, B.

(*n*) See now the Theatres Act, 1843 (6 & 7 Vict. c. 68), s. 1.

could not recover against a candidate at an election for provisions supplied at his request after the time mentioned in the statute.] This rule applies where a statute prohibits contracting out—*e.g.*, in the case of liability for property tax or to compensate workmen or agricultural tenants, or as to the right of an occupier to kill ground game. Any term of a contract violating the prohibition is invalid and unenforceable. To make a contract void or unenforceable it is not necessary that the statute should prohibit it under specific penalties or declare it illegal (*o*). The most conspicuous example is that of gaming contracts and betting, which have again and again been held void only and not illegal nor criminal (*p*).

But it is clear that a contract is void if prohibited by a statute under a penalty, without expressly declaring the contract to be void because such a penalty implies a prohibition (*q*). The sole question in either case is whether the statute means to prohibit the contract. "If it does so, whether it be for purposes of revenue or otherwise, then the doing of the act is a breach of the law, and no right of action can arise out of it" (*r*). In *Melliss v. Shirley L. B.* (1885), 16 Q. B. D. 446, the surveyor of a local board was sued, jointly with another person, for a sum alleged to be due under a contract between them and the board for the execution of certain drainage works. The action was held not to be maintainable, on the ground that sect. 193 of the Public Health Act of 1875 had the effect of making the contract illegal. Bowen, L.J. (at p. 454), said: "In the end we have to find out, upon the construction of the Act, whether it was intended by the Legislature to prohibit the doing of a certain act altogether, or whether it was only intended to say that, if the act was done, certain penalties should follow as a consequence. If you can find out that the act is prohibited, then the principle is that no man can recover in an action founded on that which is a breach of the provisions of the statute. It seems to me plain, from the language of sect. 193, that there is a prohibition on what has been done. I think no language could be plainer, and the mere fact that certain consequences are, by the latter part of the section, attached to the illegal act does not, in my opinion, render the previous language less clear." Where a contract is rendered illegal, whether by statute or common law, it is for the Court to take notice of the fact, and to refuse to enforce it even if the illegality is not pleaded by the parties to the action (*s*). •

38 & 39 Vict.  
c. 55.

(*o*) *Cowan v. Milburn* (1867), L. R. 2 Ex. 230, 233, Bramwell, B. Leases rendered void by 13 Eliz. c. 10 and 18 & 19 Vict. c. 124, s. 29, are not merely voidable but absolutely void for all purposes: *Magdalen Hospital v. Knotts* (1879), 4 App. Cas. 324; *Bishop of Bangor v. Parry*, (1891) 2 Q. B. 277.

(*p*) See *Powell v. Kempton Park Racecourse Co.*, (1899) A. C. 143.

(*q*) *Cope v. Rowlands* (1836), 2 M. & W. 149, 157, Parke, B.; and notes to *Collins v. Blantern*, Sm. L. C. (10th ed.) 355.

(*r*) *Smith v. Mawhood* (1845), 14 M. & W. 452, at p. 464, Alderson, B.

(*s*) *Gedge v. Royal Exchange Assurance*, (1900) 2 Q. B. 214, Kennedy, J.; *Scott v. Brown*, (1892) 2 Q. B. 724 (C. A.).



It appears to be a settled rule of interpretation, "that although a statute contains no express words making void a contract which it prohibits, yet when it inflicts a penalty for the breach of the prohibition you must consider the whole Act as well as the particular enactment in question, and come to a decision, either from the context or the subject-matter, whether the penalty is imposed with intent merely to deter persons from entering into the contract, or for the purposes of revenue, or whether it is intended that the contract shall not be entered into so as to be valid in law" (t). And in such cases, even if the consequences of such a construction may be harsh, it is the duty of the Court only to construe the Act (u). The same conclusion was reached by the Judicial Committee in *Musgrove v. Chung Tecong Toy*, (1891) App. Cas. 272, where it was held that the infliction of a penalty for bringing by sea more than a certain number of Chinese involved a prohibition, not only upon the shipowner, but upon the immigrants. But where a statute imposed a penalty for revenue purposes on a person delivering a contract note not properly stamped, it was held in *Learoyd v. Bracken*, (1894) 1 Q. B. 114, that the contract itself was not rendered illegal by failure to deliver a properly stamped note.

Where a statute prescribes that a contract shall be in a particular form, or shall or shall not contain certain terms, the statutory form must be followed (x), and the statutory terms may not be waived by the parties to the contract. In *Netherseal Co. v. Bourne* (1889), 14 App. Cas. 228, a case on the Coal Mines Regulation Act, 1872, Lord Halsbury said, at p. 235: "The statute discloses the view that the mine-owner and the persons employed in the mine were not, in the contemplation of the Legislature, fit to be trusted to make their own bargains;" and he went on to decide that a protective stipulation in the Act in favour of the miners could not be waived by them, and that the principle, *Quilibet renunciare potest juri pro se introducto*, was inapplicable in such a case.

Statutory conditions as to contract may not be waived.  
35 & 36 Vict. c. 76.

Even where one party has had the full benefit of a contract void for non-compliance with a statute, he may set up the non-compliance as an answer to any claim to make him perform his part of the bargain. This rule is laid down in *Young v. Mayor, &c. of Leamington* (1883), 8 App. Cas. 517, where a sanitary authority set up the want of a seal as an answer to the claim for the cost of constructing some public works of which they had taken the benefit (y).

Illegality may be set up after part performance.

(t) *Melliss v. Shirley L. B.*, 16 Q. B. D. at p. 451, Lord Esher, M.R.

(u) *Loc. cit.* p. 453, Cotton, L.J.

(x) The innumerable cases on the Bills of Sale Act, 1882, proceed on the admission of this rule, and are devoted to discussion of the modes of evading the terms or limiting the application of the commands of that Act.

(y) In Canada, in the case of *London Life Insurance Co. v. Wright* (1873), 5 Canada, 466, the Supreme Court, by a majority, restrained an insurance company from setting up a similar defence to an action on a policy issued by the company. In this case very many English and American decisions were dis-

Contracts  
contrary to  
policy of  
statute are  
void.

[And not only is a contract invalidated which involves in its performance the direct contravention of the statute, but it is also a well-recognised principle of law (z) that any contract will be held void, "although not in contravention of the specific directions of a statute, if it be opposed to the general policy and interest thereof." Thus, in *Elliot v. Richardson* (1869), L. R. 5 C. P. 744, it was held that an agreement, made between two persons who were creditors of a company which was being wound up, whereby one of them undertook for a money consideration to delay the proceedings of the winding-up to the prejudice of the other shareholders and creditors, was void, "as being against the clear intention of the Legislature under the Winding-up Acts." But, as has already been pointed out (a), questions of policy are difficult to solve, and it is safer to keep to the manifest intention, express or implied, without turning aside to vague and delusive generalities as to the policy of the law or of any particular Act.

The Courts will not be astute to construe an Act so as to avoid a contract, or a contract so as to bring it within the prohibition of a statute. Speaking of the Bills of Sale Act (1878) Amendment Act, 1882 (45 & 46 Vict. c. 43), Cave, J., said in *Hammond v. Hocking* (1884), 12 Q. B. D. 291, 292: "The question arises on sect. 7 of the Act, which was passed for the protection of the borrower from oppression, and, while we construe the Act so as to produce the effect intended by the Legislature, we ought not, in construing it, to give way to *needless technicalities*, because, if we do so, we shall run the risk of interfering with honest transactions, and also, by rendering bills of sale doubtful and bad securities, make the position of the borrower worse than it was before the Act was passed." It is doubtful whether the last consideration is for the Courts, except so far as it is adopted to carry out the intention of the Legislature; and it may be plausibly argued that the inevitable result of the Act was to raise the rate of interest and increase the difficulty of borrowing on the security of chattels.

Illegal term  
in contract  
does not  
necessarily  
vitate the  
whole con-  
tract.

[Where the contract in question is not merely for the performance of a single act, but involves the doing of several things, some of which are legal and some prohibited by statute, the question has been raised as to whether the whole contract would be void, or merely that part of it the performance of which the statute prohibits. It appears to have been laid down in some

cussed, and the American rule seems to have been adopted, which admits the equitable exception that if a contractor has had the benefit of his contract he will not be permitted, in an action against him founded upon that contract, to question its validity upon the ground that it was made in violation of a statute. The merits and equity of this decision and rule may be admitted, but it seems not to be recognised by English law or equity. See Sedgwick, *Statutory Law* (2nd ed.), pp. 72, 73.

(z) See notes to *Collins v. Blantern* (1767), 1 Smith, L. C. (10th ed.) 355. On similar grounds a will is held void if it contravenes the policy of the law: *Re Wilecock's Settlement* (1875), 1 Ch. D. 229.

(a) *Ante*, pp. 67, 164.

early cases that if *any* of the covenants or conditions be void by statute, then the bond is void *in toto* (*b*), but it seems that the true rule is that if the contract is for the performance of several things, one of which is prohibited by statute, it is not void *in toto*, unless the prohibiting statute expressly enacts that all instruments containing any matter contrary thereto shall be void, provided the good part be separable from, and not dependent upon, the bad part (*c*).] This view is supported by the decision of the House of Lords in *Netherseal Co. v. Bourne* (1889), 14 App. Cas. 228, where it was held that a contract, not illegal as a whole, but containing a stipulation for illegal deductions from wages, is not void as a whole, but that the illegal stipulations are unenforceable (*d*). In *Stanton v. Brown*, (1900) 1 Q. B. 671, it was held that sect. 3 of the Ground Game Act, 1880, which makes void every agreement, condition, or arrangement which purports to divest or alienate the right of the occupier as declared, given, and reserved to him by this Act, "to kill ground game on lands in his occupation, only avoids so much of an agreement as is contrary to the provisions of the Act." And they held that a reservation of sporting rights contained in a lease, though avoided as to ground game, held good as to winged game (*e*). If, however, a contract be made on several considerations, one of which is prohibited by statute, the whole will be void, because *every* part of a contract is affected by the illegality of *any* part of its consideration (*f*).

43 & 44 Vict.  
c. 47.

In *Valentini v. Canali* (1889), 24 Q. B. D. 166, a man claimed cancellation of a contract and repayment of the sum paid by him on the contract, which was for his benefit, on the ground that he was an infant when he entered into the contract, and it was contended that, inasmuch as the Infants' Relief Act, 1874, s. 1, made certain contracts by infants void, the infant was entitled to recover all sums paid by him under the contract as if the consideration for the contract had wholly failed. But the Court rejected the argument, and Lord Coleridge said: "No doubt the words of sect. 1 of the Infants' Relief Act are strong and general, but a reasonable construction ought to be put upon them. The construction which has been contended for on behalf of the plaintiff would involve a violation of natural justice. . . . The object of the statute would seem to have been to restore the law for the protection of infants, upon which judicial decisions were considered to have imposed qualifications. The Legislature never intended, in making provisions for this purpose, to sanction a cruel injustice."

37 & 38 Vict.  
c. 62.

(*b*) See notes to *Collins v. Blantern* (1767), 1 Smith, L. C. (10th ed.), at p. 371.

(*c*) *Ibid.*; and see *Mouys v. Leake* (1799), 8 T. R. 411; and *Kerrison v. Cole* (1807), 8 East, 231.

(*d*) Cf. *Kearney v. Whitehaven Colliery Co.*, (1893) 1 Q. B. 700.

(*e*) Cf. *Anderson v. Vicary*, (1900) 2 Q. B. 287; *Sherrard v. Gascoigne*, (1900) 2 Q. B. 279; and the amending Act of 1906 (6 Edw. 7, c. 21).

(*f*) *Shackell v. Rosier* (1836), 2 Bing. N. C. 634, 646, Tindal, C.J.

## CHAPTER II.

## ENABLING ACTS.

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Classification  
of enabling  
Acts.

1. MANY statutes have been passed to enable something to be done which was previously forbidden or not distinctly authorised by law, with or without prescribing the way in which it is to be done. Such statutes are passed for a variety of purposes. In order to discuss the rules which regulate the effect of statutes of this class, we may conveniently consider the question under the following heads, viz. :—

- (1) Statutes which prescribe or regulate the way in which something is to be done.
- (2) Statutes which grant to private individuals the powers for carrying out some public work.
- (3) Statutes which enable by-laws and rules to be made.

- (4) Statutes which empower the Crown to do something, not comprised within the prerogative.  
 (5) Enabling Acts, when obligatory and when permissive.

2. [One of the first principles of law with regard to the effect of an enabling Act is that, if the Legislature enables something to be done, it gives power at the same time, by necessary implication, to do everything which is absolutely indispensable for the purpose of carrying out the purpose in view, "on the principle," as Parke, B., said in *Clarence Rail. Co. v. Great N. of England Rail. Co.* (1845), 13 M. & W. 706, 721, "that *ubi aliquid conceditur, conceditur etiam id sine quo res ipsa non esse potest.*"]

(a) "The general rule under this head of law is, that where the Legislature gives power to a public body to do anything of a public character, the Legislature means also to give to the public body all rights without which the power would be wholly unavailable, although such a meaning cannot be implied in relation to circumstances arising accidentally only" (a). This rule was applied in the case cited by holding that a sanitary authority, which by statute had authority as against landowners to construct sewers, and a duty in favour of landowners to maintain them, were impliedly entitled to subjacent (but not to lateral) support to the sewers from lands, without purchasing the subjacent soil or any easement of support, but subject to the obligation of making compensation under sect. 308 of the Public Health Act, 1875. Therefore, as Fry, J., said in *Mayor, &c. of Yarmouth v. Simmons* (1879), 10 Ch. D. 518, 527, "when the Legislature clearly and distinctly authorise the doing of a thing which is physically inconsistent with the continuance of an existing right, the right is gone (b), because the thing cannot be done without abrogating the right." [Thus, the power to make by-laws (c) involves the power of enforcing them. In *Doyle v. Falconer* (1866), 4 Moore, P. C. N. S. 203, it appeared that the Legislative Assembly of the island of Dominica was constituted by a Royal proclamation (which was there equivalent to an Act of Parliament), but had no special power given to it to punish members for contempt. It was argued, however, that, in accordance with the above-mentioned maxim, such a power was indispensable to its existence, but the Court held that it was not. "It is necessary," said the Judicial Committee (p. 219), "to distinguish between a power to punish for a contempt and a power to remove any obstruction offered to the deliberations of a legislative body, which last power is necessary for self-preservation. . . . The right to remove for self-security is one thing, the right to inflict punishment is another. The former is all that is warranted by the legal maxim which has been cited,

Grant of a right involves grant of the means necessary for its exercise.

38 & 39 Vict. c. 55.

(a) *Re Dudley Corporation* (1882), 8 Q. B. D. 86, 93, Brett, L.J.

(b) As to rights being taken away by implication, *vide ante*, p. 113.

(c) *Vide post*, pp. 268 *et seq.*

but the latter is not its legitimate consequence.”] In *Dr. Foster's case* (1615), 11 Co. Rep. 59, it is said: “And there (*d*) a general rule is put that when a thing is to be done before one person certain by any statute it cannot be done before any other; and yet the statute of 31 Edw. 3, c. 12, is in the affirmative; so in the case at bar (on the Statutes of Recusants) the certain designation of the Queen is an absolute exclusion of all others.” In the same case (p. 64) it is said that the designation of a new person in a later statute does not exclude another person authorised to do the same thing by an earlier Act.

Trading corporations, such as railway, canal, and dock companies, are not treated as public bodies within the meaning of this rule, at any rate so far as refers to their compulsory powers of taking land (*e*).

*Expressio  
unius est exclusio  
alterius.*

(b) Another general rule with regard to the effect of an enabling Act is expressed in the maxim, *Expressio unius est exclusio alterius* (*f*). “If there be any one rule of law clearer than another,” said the Judicial Committee in *Blackburn v. Flavelle* (1881), 6 App. Cas. 628, 634, “it is this, that, where the Legislature have expressly authorised one or more particular modes of dealing with property, such expression always excludes any other mode, except as specifically authorised” (*g*).

Difference  
between *absolute*  
and *directory* enact-  
ments.

(c) [When a statute is passed for the purpose of enabling something to be done, and prescribes the way in which it is to be done, it may be either what is called an *absolute* enactment or a *directory* enactment, the difference being, as was explained by the Court in *Woodward v. Sarsons* (1875), L. R. 10 C. P. 733, 746, that “an absolute enactment must be obeyed or fulfilled exactly, but it is sufficient if a directory enactment be obeyed or fulfilled substantially”; *i.e.*, that the act permitted by an absolute enactment is lawful only if done in accordance with the conditions annexed to the statutory permission. If an absolute enactment is neglected or contravened, a Court of law will treat the thing which is being done as invalid and altogether void, but if an enactment is merely directory it is immaterial, so far as relates to the validity of the thing which is being done, whether it is complied with or not. Thus in *Bowman v. Blyth* (1856), 7 E. & B. 26, it appeared that by 26 Geo. 2, c. 14, s. 1, the justices in quarter sessions are empowered to alter the table of fees, and, “after the same shall have been approved by the justices at the next succeeding general quarter sessions,” it shall be valid and binding on all parties. The justices of Norfolk accordingly made a new table of fees at the June quarter sessions, and submitted it for approval at the next (*i.e.*, October) quarter sessions, but at

(*d*) *Stradling v. Morgan* (1560), Plowd. 206 a, *ante*, p. 170.

(*e*) *Post*, Part IV. ch. i.

(*f*) *Dr. Foster's case* (1615), 11 Co. Rep. 59.

(*g*) *Cf. Hamilton v. Baker* (1889), 14 App. Cas. 209, 217, Lord Watson in discussing sect. 191 of the Merchant Shipping Act, 1854 (17 & 18 Vict. c. 104, *rep.*).

the October quarter sessions the question of approving it was adjourned to the Epiphany sessions. Consequently it was held that the table of fees was invalid. "The Legislature," said the Court (p. 45), "have given a limited power of approval to one particular sessions only, viz., that next holden after the making of the table of fees. . . . This table was not so approved, and therefore we think that it is not in force." So in *R. v. Lordale* (1758), 1 Burr. 445, it appeared that five overseers had been appointed to act for a certain parish, whereas by 43 Eliz. c. 2, it was enacted that only four, three, or two overseers may be appointed. The Court accordingly declared the appointment invalid. "Justices," said Lord Mansfield, "have no power to appoint overseers but by the special authority given them by Act of Parliament. Therefore this special authority must be strictly pursued, and cannot be exceeded by them" (*h*). So with regard to the creation of a highway, it was pointed out by Brett, J., in *Cubitt v. Maxse* (1874), L. R. 8 C. P. 704, 715, that, if an Act of Parliament is passed for that purpose, the provisions of such an Act must be strictly followed, or the creation will not take place. And in *Thwaites v. Wilding* (1883), 12 Q. B. D. 4, Brett, M.R., said of the Lodgers' Goods Protection Act, 1871 (34 & 35 Vict. c. 79): "The words of the statute are imperative. It is said that the construction in favour of the defendants will render the statute ineffectual to protect lodgers. I do not think so; the Legislature has imposed conditions, and these conditions must be rigidly complied with in order to deprive the landlord of his remedy at common law and to bring the lodger within the protection of the statute." But, on the other hand, if a statute is merely directory, it is, as we have said, immaterial, so far as relates to the validity of the thing to be done, whether the provisions of the statute are accurately followed out or not. Thus, in *R. v. Loffthouse* (1866), L. R. 1 Q. B. 433, it appeared that by 11 & 12 Vict. c. 63, s. 24, it was enacted that, for the purpose of electing a local board of health, "the chairman shall cause voting papers in the form in schedule A." to be distributed among the persons entitled to vote. Voting papers, however, were distributed which were not precisely in the form given in schedule A., as the column for the number of votes was left in blank. It was argued that this omission vitiated the voting papers and made the election void, but it was held that it did not. The validity of the election, said Blackburn, J., "depends upon whether the insertion of the number of votes is a condition precedent to the validity of a voting paper, or, in other words, whether the requirement of the statute on this head is obligatory. I think the omission does not vitiate the voting paper."]

(d) [It being, then, well settled that the neglect of the requirements of an Act which prescribes how something is to be done

No general rule as to when ena-

(*h*) Similarly, in *R. v. Cousins* (1864), 4 B. & S. 849, it was held that the appointment of *one* overseer (instead of four, three, or two) was invalid.

bling Acts are  
absolute and  
when direc-  
tory.

will invalidate the thing which is being done, if the enactment be absolute, but not if it be merely directory, we have now to consider whether there is any general rule as to when an enactment is to be considered absolute and when merely directory], with the exception of "provisions with respect to time," which, said Grove, J., in *Barker v. Palmer* (1881), 8 Q. B. D. 9, 10, "are always obligatory, unless a power of extending the time is given to the Court." [There is no general rule as to this, for while on the one hand we find that enactments expressed in negative and prohibitory language are not universally considered as being absolute, on the other hand enactments expressed in merely affirmative language have sometimes been held to be so. This was plainly stated by Lord Campbell in *Liverpool Bank v. Turner* (1861), 30 L. J. Ch. 379, 380, with regard to enactments expressed in merely affirmative language. "No universal rule," said he, "can be laid down as to whether mandatory enactment shall be considered directory only, or obligatory with an implied nullification for disobedience. It is the duty of Courts of justice to try to get at the real intention of the Legislature by carefully attending to the whole scope of the statute to be construed." In *Howard v. Bodington* (1877), 2 P. D. 203, 211, Lord Penzance, after citing this dictum of Lord Campbell, added as follows: "I believe, as far as any rule is concerned, you cannot safely go further than that in each case you must look to the subject-matter, consider the importance of the provision [in question], and the relation of that provision to the general object intended to be secured by the Act, and upon a review of the case in that aspect decide whether the enactment is what is called imperative or only directory. . . . I have been very carefully through all the principal cases [in which the question has been raised], but upon reading them all the conclusion at which I am constrained to arrive at is this, that you cannot glean a great deal that is very decisive from a perusal of these cases. They are on all sorts of subjects. It is very difficult to group them together, and the tendency of my mind, after reading them, is to come to the conclusion [above cited] which was expressed by Lord Campbell in the case of *Liverpool Bank v. Turner*" (i).]

Inferences to  
be drawn  
from negative  
language.

(e) [If the requirements of a statute which prescribes the manner in which something is to be done be expressed in negative language, that is to say, if the statute enact that it shall be

(i) These cases have been accepted as guides to interpretation in the Australian High Court. See *Chanter v. Blackwood* (1904), 1 Australia C. L. R. 39, 51. Sedgwick (Statutory Law, 2nd ed. pp. 318—324) considers that "the practice of sanctioning the evasion or disregard of statutes" by treating them as merely directory "has been carried beyond the line of sound discretion." He excuses it, however, on the ground that "strict compliance with all the minute details which modern statutes contain" is impossible, owing to the practical inconveniences likely to result from it, and consequently "sagacious and practical men who desire to free the law from the reproach of harshness or absurdity" are tempted not to enforce strictly all provisions contained in statutes, but to treat them as being merely directory.



done in such a manner and *in no other manner*, it has been laid down that those requirements are in all cases absolute, and that neglect to attend to them will invalidate the whole proceeding. In *R. v. Leicester* (1827), 7 B. & C. 6, it appeared that it was enacted by 54 Geo. 3, c. 84, that the Michaelmas quarter sessions shall be held in the week next after October 11. The question was whether this statutory enactment as to the time when they were to be held was absolute or merely directory, and it was held to be merely directory. "It has been asked," said Lord Tenterden, "what language will make a statute imperative if 54 Geo. 3, c. 84, be not so. Negative words would have given it that effect, but those used are in the affirmative only." But it does not appear that this can be laid down as an universal rule (*k*). At all events, it has been held on several occasions that enactments prescribing the formalities which are to be observed in solemnising a marriage are not absolute, although expressed in negative and prohibitory language, and that neglect of these formalities does not invalidate the marriage. Thus, in *Catterall v. Sweetman* (1845), 9 Jur. 954, it appeared that it was enacted by a colonial Act, "that no such marriage as aforesaid shall be had and solemnised until one or both of such persons [*i.e.*, Presbyterians or Catholics], as the case may be, shall have signed a declaration in writing," and the question was whether a marriage solemnised without the declaration in writing being signed was valid or not. "The words in this section," said Dr. Lushington, "are negative words, and are clearly prohibitory of the marriage being had without the prescribed requisites, but whether the marriage itself is void . . . is a question of very great difficulty. It is to be recollected that there are no words in the Act rendering the marriage void, and I have sought in vain for any case in which a marriage has been declared null and void unless there were words in the statute expressly so declaring it." After discussing the various English Acts on the subject of marriage, he continues as follows: "From this examination of these Acts I draw two conclusions. First, that there never appears to have been a decision where words in a statute relating to marriage, though prohibitory and negative, have been held to infer a nullity, unless such nullity was declared in the Act. Secondly, that, viewing the successive marriage Acts, it appears that prohibitory words, without a declaration of nullity, were not considered by the Legislature to create a nullity." On these grounds, therefore, he held the marriage to be valid. A similar (*l*) decision to this had been previously given by Sir

(*k*) In *Mayor of London v. R.* (1848), 13 Q. B. 33, note (*d*), Alderson, B., said: "The words 'negative' and 'affirmative' statutes mean nothing. The question is whether they are repugnant or not to that which before existed. That may be more easily shown when the statute is negative than when it is affirmative, but the question is the same."

(*l*) [See also *R. v. Birmingham* (1828), 8 B. & C. 29, where the Court declined

John Nicholl in *Smallwood v. Tredger* (1815), 2 Phillimore, 287, a case turning upon Lord Hardwicke's Marriage Act (26 Geo. 2, c. 33), s. 1, which enacted that, "in all cases where banns have been published, the marriage shall be solemnised in one of the parish churches where such banns have been published, and in no other place whatever." Sir John Nicholl there decided in favour of the validity of a marriage which had been solemnised at a church different from that at which the banns were published, but, as he said, he took the question on narrow grounds, and on its own particular circumstances, without committing himself to the general proposition that in no case would a marriage be void which had been solemnised elsewhere than in the church where the banns were published. His decision was confirmed by the Court of Delegates, but without reasons being stated.]

Inferences  
from affirma-  
tive language.

[Statutory enactments, although expressed in affirmative language, are sometimes treated as having a negative implied, and that their provisions, "though," as Lord O'Hagan said in *R. v. All Saints, Wigan* (1876), 1 App. Cas. 611, 629, "affirmative in words, are not necessarily so, if they are absolute, explicit, and peremptory." In Viner's Abr. tit. Negative, A. pl. 2, the following rule is laid down: "Every statute limiting anything to be in one form, although it be spoke in the affirmative, yet includes in itself a negative;" and in Bacon's Abr. tit. Statute, G., the rule given is, that "if an affirmative statute which is introductive of a new law direct a thing to be done in a certain way, that thing shall not, even if there be no negative words, be done in any other way." This rule is borne out by the following cases:—In *Stradling v. Morgan* (1560), Plowd. 198, 206, the question was whether an action founded upon a statute could be commenced elsewhere than before the justices of Glamorgan at their sessions, for by 34 & 35 Hen. 8, c. 26, it was enacted that "all actions founded upon any statutes shall be sued by original writ, to be obtained and sealed with the said original seal returnable before the justices, at their sessions, within the limits of their authorities, in manner and form before declared." It was contended that these words had a negative meaning, that is to say, that the statute appoints the place, order, and form of such suits, and that they cannot sue in any other place or form, and therefore that this action, founded upon a statute, which is appointed to be returned before the justice of Glamorgan, at his sessions, cannot be sued or returned elsewhere or before any other justice. And so it was decided by the Court, and a verdict which had been found for the plaintiff was set aside. In *Amy Townsend's case* (1554), Plowd. 110 a, the

to hold a marriage void which had not been consented to in the manner required by the Act of 4 Geo. 4, c. 75, s. 16; and *Wing v. Taylor* (1861), 30 L. J. P. & M. 263, where sect. 28 of the last-mentioned Act (as to the presence of witnesses) had not been complied with.]

question was whether the Statute of Uses, sects. 1, 2, which is expressed affirmatively, contained an implied negative. By this statute it is enacted that persons entitled to a use of lands shall have the same estate, both according to quantity and quality, in the lands as they had in the use. It was argued that these words contained in themselves a negative, *i.e.*, that the *cestui que use* had an estate in no other quantity or quality than they had in the use, and the reason given was that there is a diversity between a statute which makes an ordinance by affirmative words touching a thing which *was* before at the common law, and a statute which makes an ordinance by affirmative words touching a thing which *was not* before at the common law, and that where, as here, a statute appoints the manner of a thing which *was not* before at the common law, then, although it be expressed in the affirmative, it implies a negative. This argument the Court adopted, and decided that the enactment must be strictly adhered to. In *Trott v. Hughes* (1850), 16 L. T. (O. S.) 260, Lord Cranworth held that where rules, framed by virtue of a statute for the regulation of benefit building societies, provided that any dispute which might arise between the society and any of its members should be referred to and decided by the directors of the society, the provision was equivalent to enacting that no such dispute was to be made the subject of litigation in a Court of law, and consequently he dismissed a suit which arose out of such a dispute (*m*). In *Ex parte Stephens* (1876), 3 Ch. D. 659, the question was whether a mere word or distinctive combination of letters was a trade-mark within the meaning of 38 & 39 Vict. c. 91 (*n*). By sect. 10 of this Act it is enacted that a trade-mark may consist of (among other things) "any special and distinctive word or combination of letters used as a trade-mark *before* the passing of this Act." It was accordingly held that a word which had not been used as a trade-mark *before* the passing of the Act could not be used as a trade-mark *after* the passing of the Act. "Otherwise," said Jessel, M.R., "it would be contravening the well-known rule, that when there is a special affirmative power given which would not be required because there is a general power, it is always read to import the negative, and that nothing else can be done. Therefore the power to use as a trade-mark a word used *before* the passing of the Act clearly negatives the conclusion that a distinctive word can be so used if the word was not so used before the passing of the Act" (*o*).]

(*m*) This view was adopted in *Municipal Permanent Investment Co. v. Kent* (1884), 9 App. Cas. 260.

(*n*) Repealed by the Patents, &c. Act, 1883.

(*o*) A statute of New Zealand made in the affirmative creating a close season for "native game" has been held to imply a prohibition against killing such game during the close season: *McKenzie v. Pennan* (1902), 21 N. Z. L. R. 210.

Statutes giving jurisdiction to Courts are usually absolute.

(f) [As a general rule, statutes which enable persons to take legal proceedings under certain specified circumstances must be accurately obeyed notwithstanding the fact that their provisions may be expressed in mere affirmative language.] Thus, in *Edwards v. Roberts*, (1891) 1 Q. B. 302, it appeared that it is enacted by 20 & 21 Vict. c. 43, s. 2, that “after the hearing by a justice of the peace of any summary information, either party may, if dissatisfied . . . apply in writing within three days . . . to the said justice to state and sign a case setting forth the facts.” The appellant neglected to get the case stated within the three days prescribed, and it was held, in consequence, that the Court had no jurisdiction to hear the appeal (*p*). This rule may also be expressed thus—that when a statute confers jurisdiction upon a tribunal of limited authority and statutory origin, the conditions and qualifications annexed to the grant must be strictly complied with. It has frequently been decided, even on Acts by which the writ of *certiorari* is taken away, that no justice of the peace can increase his limited jurisdiction by finding facts which do not exist (*q*).

Of the provisions of enabling Acts some may be absolute and others not.

(g) [Where a statute does not consist merely of one enactment, but contains a number of different provisions regulating the manner in which something is to be done, it often happens that some of these provisions are to be treated as being directory only, while others are to be considered absolute and essential; that is to say, some of the provisions may be disregarded without rendering invalid the thing to be done, but others not. For “there is a known distinction,” as Lord Mansfield said in *R. v. Loxdale* (1758), 1 Burr. 445, 447, “between circumstances which are of the essence of a thing required to be done by an Act of Parliament and clauses merely directory.” In *Pearse v. Morrice* (1834), 2 A. & E. 84, 96, Taunton, J., said that he understood “the distinction to be, that a clause is directory where the provisions contain mere matter of direction and nothing more, but not so where they are followed by such words as, ‘that anything done contrary to these provisions shall be null and void to all intents.’” The Act 34 Geo. 3, c. 68, ss. 15, 16, regulated the method of transferring the property in a ship, enacting that “whereas upon any alteration of property in any ship an indorsement upon the certificate of registry is required to be made, such indorsement shall be signed by the person transferring the property, and a copy of such indorsement shall be delivered to the person authorised to make registry, otherwise such sale or contract shall be utterly null and void, and such person so authorised to make registry is hereby required to cause an entry thereof to be indorsed on the affidavit upon which the original certificate of the registry of such ship was

(*p*) See also *Peacock v. R.* (1858), 27 L. J. Q. B. 224.

(*q*) See Short and Mellor, *Crown Practice*, pp. 117—119.

obtained, and shall also make a memorandum of the same in the book of registry, and shall forthwith give notice thereof to the Commissioners of Customs in England." It was argued in *Heath v. Hubbard* (1803), 4 East, 110, that, although all the other provisions of this statute had been complied with, a transfer of the property in a ship was rendered invalid if the port officer neglected to give notice of the transfer to the Commissioners of Customs in London. But, said the Court (at p. 127), sect. 16 "can only be considered as directory, so far as respects the entry and memorandum to be made and the notice to be given to the Commissioners of Customs by the persons authorised to make registry: the vacating provisions being confined to the commission of such acts only as are required to be done by the immediate parties to the sale or transfer, and not extending (as it would be most unreasonable that they should extend) to the acts or omissions of third persons or strangers." Similarly, the Royal Marriage Act (12 Geo. 3, c. 11), which came into question in the *Sussex Peerage Claim* (1844), 11 Cl. & F. 85, 148, enacts that no descendant of George II. shall be capable of contracting matrimony without the previous consent of the King, "which consent," the Act says, "is hereby directed to be set out in the licence and register of marriage." With regard to these words, Tindal, C.J., in delivering the opinion of the judges in the House of Lords, said that "the only words in that section that are essential to make the marriage a valid marriage are those which require the previous consent of his Majesty, and the words which follow, directing such consent to be set out in the licence and register of marriage, are, as the very words import, directory only, and not essential, and are applicable to those cases only where they can be applied, namely, to the case of a marriage celebrated in England by licence." This question also received a considerable discussion in *Woodward v. Sarsons* (1875), L. R. 10 C. P. 733. The Ballot Act, 1872 (35 & 36 Vict. c. 33), contains very elaborate and precise directions as to the way in which voters are to mark their ballot papers, and the question arose in that case as to whether all or any of these directions were imperative or merely directory, for, if they were to be treated as imperative, it was admitted that, in accordance with the general rule (*r*), any ballot papers not marked precisely in accordance with these directions would have to be rejected as invalid. The Act is divided into two parts—the principal part, that is to say, the body of the Act, which is divided into sections in the ordinary way, and two schedules, which contain rules and forms, which rules and forms are in sect. 28 spoken of as "directions," although it is enacted by the same section that they are to be "construed and have effect as part of the Act." This use of the epithet "directions," as applied to the rules and

(*r*) *Ante*, p. 230.

forms, led the Court to the conclusion that the enactments in the two schedules were to be treated as merely directory, but that those contained in the principal part of the Act were to be considered as imperative and absolute. Consequently, it was held that if the provisions contained in the body of the Act were fulfilled exactly, notwithstanding that the provisions contained in the schedules were not precisely followed, the vote would be valid.] The principles of this decision were also applied in *Phillips v. Goff* (1886), 17 Q. B. D. 805, to a General Order relating to the election of a school board, which is subject to the provisions of the Ballot Act (s).

Compliance with provisions of enabling Act excused if performance of prescribed conditions impossible.

(h) [Under certain circumstances, compliance with the provisions of statutes which prescribe how something is to be done will be excused. Thus, in accordance with the maxim of law, *Lex non cogit ad impossibilia*, if it appears that the performance of the formalities prescribed by a statute has been rendered impossible by circumstances over which the persons interested had no control, like the act of God or the King's enemies, these circumstances will be taken as a valid excuse. The Act 10 Geo. 3, c. 51, s. 12, provided that "the proprietor of any entailed estate who lays out money in making improvements upon his entailed estate, shall annually, during the making of such improvements, within four months after Martinmas, lodge with the sheriff an account, subscribed by him, of the money expended by him," and then, after the death of such proprietor, his representatives would be entitled to claim the amount so expended from the succeeding tenant in tail. The meaning of the Act came into question in *Campbell v. Earl of Dalhousie* (1868), L. R. 1 H. L. (Sc.) 259. Lord Breadalbane had expended certain sums of money under the Act, but was prevented from accounting to the sheriff in the manner prescribed by the Act in consequence of his death four days before Martinmas. The question then arose as to whether the succeeding tenant in tail was liable to pay these sums of money to the representatives of Lord Breadalbane. The House of Lords held that he was liable, and that, compliance with the provisions of the Act having been rendered impossible by the death of Lord Breadalbane, the omission was to be excused. "If by the act of God," said the Lord Chancellor, "it becomes impossible that the claim can be signed, it appears to me that it would be construing the Act of Parliament in a way in which no clause of the kind has ever been construed, if we held that, where the act of God thus prevented a compliance with the words of a statute, the proprietor or his representatives should thereby be prevented from making a claim for improvements."]

Also performance of prescribed

(i) [If the object of a statute is not one of general policy, or if the thing which is being done will benefit only a particular

(s) See discussion of these questions with reference to federal elections in Australia: *Chanter v. Blackwood* (1904), 1 Australia C. L. R. 39.

person or class of persons, then the conditions prescribed by the statute are not considered as being indispensable. This rule is expressed by the maxim of law, *Quilibet renunciare potest juri pro se (t) introducto*. As a general rule (u), the conditions imposed by statutes which authorise legal proceedings to be taken are treated as being indispensable to giving the Court jurisdiction. But if it appears that the statutory conditions were inserted by the Legislature simply for the security or benefit of the parties to the action themselves, and that no public interests are involved, such conditions will not be considered as indispensable, and either party may waive them without affecting the jurisdiction of the Court.] Where a statute deprives a person of a legal remedy, but does not deny him a cause of action, e.g., the Statute of Frauds or Statute of Limitations, Courts of Justice, whether under the specific rules of procedure or under their general course of practice, treat the right of the defendant to bar the remedy as waived if he does not plead the statute which bars it.

conditions may be dispensed with if inserted merely for benefit of particular class of persons.

In *Wilson v. Macintosh*, (1894) App. Cas. 129, an application was made to bring lands under the Real Property Act (26 Vict. No. 9) of New South Wales. A caveat was lodged under sect. 23, and more than three months thereafter the applicant lodged his case under sect. 21, and obtained an order that the caveator should file his case. The Judicial Committee said: "Their lordships are of opinion that the maxim '*Quilibet potest renunciare juri pro se introducto*' applies to this case, that it was competent for the applicant to waive the limit of the three months, and the lapse of the caveat by sect. 23, and that the respondent did waive it by stating a case and applying for and obtaining an order on the caveator to state his case, both which steps assumed and proceeded on the assumption of the continued existence of the caveat." And the committee quoted with approval the following opinion of Darley, C.J.: "It is to my mind a clear principle of equity, and I have no doubt there are abundant authorities on the principle that equity will interfere to prevent the machinery of an Act of Parliament being used by a person to defeat equities which he has himself raised, and to get rid of a waiver created by his own acts" (x). [In *Park Gate Iron Co. v. Coates* (1870), L. R. 5 C. P. 634, Bovill, C.J., said: The provisions of 13 & 14 Vict. c. 61, s. 14, "that there shall be notice of appeal and security, seem to me to have been intended for the benefit of the respondent. It is not a matter with which the public are concerned. If this is so, it falls

(t) It was first stated by Lord Westbury in *Hunt v. Hunt* (1862), 31 L. J. Ch. 161, 175, and was introduced into the maxim to show that no man can renounce a right which his duty to the public, which the claims of society, forbid the renunciation of."

(u) *Ante*, pp. 73, 74.

(x) Cf. *Wright v. Bagnall*, (1900) 2 Q. B. 240; *Rendall v. Hills' Dry Docks, &c. Co.*, (1900) 2 Q. B. 245.

within the rule that either party may waive provisions which are for his own benefit." So also, if a statute simply enables a particular class of persons to do or refrain from doing some particular thing under certain circumstances, it is optional with those persons whether they avail themselves of the privilege afforded them by the statute, or whether they waive their right of doing so (*y*). In *Hebblethwaite v. Hebblethwaite* (1869), L. R. 2 P. & M. 29, the respondent objected to a witness being asked whether she had committed adultery with him, on the ground that it is enacted by 32 & 33 Vict. c. 68, s. 3, that "the parties in any proceedings instituted in consequence of adultery shall be competent to give evidence . . . provided that no witness shall be *liable to be asked* or bound to answer any question tending to show that he or she has been guilty of adultery." It was argued by the respondent that in consequence of this enactment such a question could not be put. But the Judge Ordinary held that, as the general intention of the statute was to protect the witness, no objection could be taken to the question by any one else, if the witness herself did not object to answer it. "The provision," said he, "was not intended to apply to the evidence by which the case of either side was supported independent of the evidence of the parties; it was not intended to narrow the sources of evidence, but to protect the witness" (*z*).]

Conditions in enabling Act prescribed for public benefit cannot be dispensed with.

[But the conditions in an enabling Act which have been prescribed for the purpose of protecting or benefiting the public cannot be dispensed with. By the Australian Courts Act, 1828, 9 Geo. 4, c. 83, ss. 3, 4, a Supreme Court was constituted in New South Wales with the same jurisdiction as the Courts in England. It was therefore held in *R. v. Bertrand* (1867), L. R. 1 P. C. 520, that the principle of English law that a prisoner can waive nothing bound the Court in New South Wales. Consequently, when, upon the disagreement of a jury in a criminal trial, a second trial took place, at which the evidence of some of the witnesses was, with the prisoner's consent, read over to the jury instead of being given afresh, the trial was held to be void for irregularity, notwithstanding that the prisoner had consented to what had taken place.]

Power to incur debts strictly construed.

Power to borrow money must be exercised in exact accordance with the restrictions imposed by the Act conferring the power (*a*). Powers to do all things necessary to carry out the object of a (local) Act do not authorise the donees of the power to pay as

(*y*) "The doctrine of estoppel," said Bacon, V.-C., in *Barrow's case* (1880), 14 Ch. D. 432, 441, cannot be applied to an Act of Parliament. . . . There is no estoppel if parties contract to do a thing which . . . it is unlawful to do." But see *Wright v. Dagnall*, (1900) 2 Q. B. 240.

(*z*) [A similar rule exists with regard to the protection given to a witness by the common law, whereby a witness may refuse to answer a question on the ground that it tends to criminate him, but if he does not avail himself of this right of refusal, his evidence cannot be objected to as having been improperly received: *R. v. Kinglake* (1870), 22 L. T. 335.]

(*a*) *R. v. Wigan (Churchwardens of All Saints)* (1876), 1 App. Cas. 611.



expenses of the earlier Act the costs of a Bill in Parliament for its amendment (*b*), and the application of borough funds to the expenses of opposing Bills in Parliament is strictly limited by the Borough Funds Act, 1872 (*c*). But this rule does not apply so as to exempt statutory bodies from liability for negligence in the execution of their statutory powers. Where an Act authorises the levying of a rate to pay for work to be done under the Act, it impliedly authorises a rate to pay for damage done by negligent exercise of the statutory powers (*d*). 35 & 36 Vict.  
c. 91.

[Sometimes a statute, passed for the purpose of enabling something to be done, gives a discretionary power to the persons who are to carry out the purpose of the statute. Thus by 32 & 33 Vict. c. 40, s. 1, "every authority having power to levy rates upon the occupier of any building used exclusively as a Sunday-school or ragged school *may exempt* such building from any rate." Upon this enactment the Court held in *Bell v. Crane* (1873), L. R. 8 Q. B. 481, that "it was not the intention that the exemption under the Act should be absolute," and that it was clear "that the use of the phrase 'may exempt' was intended to give a discretion." Discretionary  
power given  
by enabling  
Act.

If a Court of justice is invested by Act of Parliament with a discretion, "that discretion," said Bowen, L.J., in *Gardner v. Jay* (1885), 29 Ch. D. 50, 58, "like other judicial discretions, must be exercised according to common-sense and according to justice, and if there is no indication in the Act of the ground upon which the discretion is to be exercised, it is a mistake to lay down any rules with a view of indicating the particular grooves in which the discretion should run" (*e*). [But, as Lord Blackburn said as to the exercise of discretionary power by a Court of equity in *Doherty v. Allman* (1878), 3 App. Cas. 709, 728, "the discretion is not to be exercised according to the fancy of whoever is to exercise the jurisdiction of equity, but is a discretion to be exercised according to the rules which have been established by a long series of decisions." Therefore, as Willes, J., said in *Lee v. Bude, &c. Rail. Co.* (1871), L. R. 6 C. P. 576, 580, if it is intended by the Legislature that a discretion should be exercised, what is meant is "a judicial discretion regulated according to the known rules of law, and not the mere whim or caprice of the person to whom it is entrusted on the assumption that he is discreet" (*f*). "Discretion," said Lord Mansfield in *R. v. Wilkes* (1770), 4 Burr. 2527, 2539, "when applied to a Court of justice, means sound discretion Judicial discretion, how  
to be used.

(*b*) *Att.-Gen. v. West Hartlepool* (1870), L. R. 10 Eq. 152.

(*c*) *Att.-Gen. v. Swansea Corporation*, (1898) 1 Ch. 602, North, J.

(*d*) *Gaillsworthy v. Selby Dam Drainage Commissioners*, (1892) 1 Q. B. 348.

(*e*) See also per Jessel, M.R., in *Emma Silver Mining Co. v. Grant* (1879), 11 Ch. D. 918, 926; and in *Ex parte Merchant Banking Co.* (1881), 16 Ch. D. 635.

(*f*) "I do not suppose it will ever be held to mean that the Court of its own will and pleasure or at its own mere caprice will substitute. . . ." Per Pearson, J., in *Holland v. Worley* (1884), 26 Ch. D. 578, 584.

guided by law. It must be governed by rule, not by humour; it must not be arbitrary, vague, and fanciful, but legal and regular." "Discretion," said Lord Coke in 2 Inst. 56, "*est discernere per legem quid sit justum*;" in *Rooke's case* (1598), 5 Co. Rep. 100 a, "Discretion is a science or understanding to discern between falsity and truth, between wrong and right, between shadows and substance, between equity and colourable glosses and pretences, and not to do according to their wills and private affections;" and again, in *Keighley's case* (1610), 10 Co. Rep. 140 a, he said: "Discretion is *scire per legem quid sit justum*."]

20 & 21 Vict.  
c. 85.

In discussing the Matrimonial Causes Act, 1857, s. 31, Lord Penzance said, in *Morgan v. Morgan* (1869), L. R. 1 P. & D. 644, 647: "A loose and unfettered discretion is a dangerous weapon to entrust to any Court, still more so to a single judge. Its exercise is likely to be the refuge of vagueness in decision and the harbour of half-formed thought. Under cover of the word 'discretion' a conclusion is apt to be formed upon a general impression of facts too numerous and minute to be perfectly brought together and weighed, and sometimes not perfectly proved, while the result is apt to be coloured with the general prejudices favourable or otherwise to the person whose conduct is under review, which the course of the evidence has evoked. Upon such materials, so used, two minds will hardly form a judgment alike, and the same mind may appear to others to form contradictory judgments on what seems to be similar facts. This invites public criticism, and shakes public confidence in the justice of the tribunal. I hold, therefore, that the discretion to be exercised by the 31st section of the statute should be a regulated discretion, and not a free option subjected to no rules. It was probably reposed in the Court because the Legislature found it impossible to foresee and specify the classes of cases fit for its application which might arise under the new law. The duty of reducing its exercise to method devolves on the Court."

In the modern statutes relating to Church discipline and the regulation of public worship the discretion given appears to be general and absolute, provided that it is exercised *bonâ fide* (g).

When and by  
whom power  
to be exer-  
cised.

Where an Act passed after 1889 confers a power, then, unless the contrary intention appears, the power may be exercised from time to time as occasion requires, and if given to the holder of an office, may be exercised by the holder for the time being of an office (h). It is doubtful whether this applies to powers of making bylaws, at any rate so far as they are given to corporations, inasmuch as corporations cannot be described as holders of office, although individual corporators may hold corporate

(g) *Julius v. Oxford (Bishop of)* (1880), 5 App. Cas. 214; and see *Allcroft v. London (Bishop of)*, (1891) A. C. 666.

(h) Int. Act, 1889, s. 31 (1), (2), Appendix C.

office. The substantial effect of the provision is to rebut the presumption that the power is exhausted by a single exercise, and to declare powers given to an official exercisable *virtute officii* by him and his successors, and not to be personal to him. And the presumption created by this enactment is usually excluded with reference to compulsory powers of interference with private property which are usually exercisable only within a limited time after the passing of the Act (*i*).

3. [With regard to the effect of statutes which give power to carry out some object which it is assumed will benefit the public at large, like making a railway, one of the most important rules is, that although it is not obligatory upon persons who have obtained an Act of Parliament enabling them to form themselves either into an incorporated company (*k*) or a statutory corporation (*l*) for some specific purpose, to carry out that purpose, still, if they do proceed to exercise the powers conferred upon them by the Act which they have obtained, "it is their bounden duty," as Turner, L.J., said in *Tinkler v. Wandsworth D. B. W.* (1858), 2 De G. & J. 261, 274, "to keep strictly within these powers, and not to be guided by any fanciful view of the spirit of the Act which confers them."] The doctrine of *ultra vires*, which looms large in modern text-books and cases (*m*), turns upon the proper mode of applying this principle to the ramifications of modern joint-stock enterprise. ["One of the best established objects," said Lord Cairns in *Richmond v. North London Rail. Co.* (1868), 3 Ch. App. 679, 681, "of the jurisdiction of the Court of Chancery is to take care that companies exercising powers under their Acts shall not exercise them otherwise than for the purposes of the Act, and when there is any ground for supposing that the powers are to be exercised for any other purpose the Court should see whether the company is really misusing its powers." Thus, in *Bright v. North* (1847), 2 Phill. 216, where commissioners were authorised by statute to levy a rate "for putting the bank of a river into and maintaining the same in a permanent state of stability," it was held by Lord Cottenham that they were justified in applying the money raised by rate in opposing a private Bill which was being brought before Parliament to authorise the construction of works which in their opinion would be injurious to the maintenance of the banks of that river.] But, as Brett, M.R., said in *R. v. White* (1885), 14 Q. B. D. 358, 362, such persons would not be allowed

Power to carry out public work, if exercised, must be confined to purposes specified by the Legislature.

(*i*) *Vide post*, Part IV., "Private Acts."

(*k*) In Lindley on Partnership (7th ed. pp. 22, 23) is pointed out "the important difference between incorporated and unincorporated companies."

(*l*) A corporation created by statute for a particular purpose is called a statutory corporation to distinguish it from a corporation at common law. Per Lord Selborne in *Ashbury Carriage Company v. Riche* (1875), L. R. 7 H. L. 653, 693; *cf.* judgment of Blackburn, J., in same case (1874), L. R. 9 Ex. 224, 263.

(*m*) See Lindley on Companies (6th ed.), pp. 435 *et seq.*; Brice on *Ultra Vires* (3rd ed.), pp. 44 *et seq.*

to "originate litigation." [Thus, in *Att.-Gen. v. Andrews* (1850), 2 Macn. & G. 225, where a local Act authorised commissioners to raise funds by rates for the purpose of supplying the town of S. with water, and "in otherwise carrying the Act into execution," it was held that they were not authorised thereby to apply their funds in promoting a fresh Act of Parliament which was to give them more extensive powers, although it was admitted that [as in the last case] they might have applied them in opposing a Bill which they considered would be injurious to their interests. And this principle holds good also with regard to powers conferred upon all public bodies, like local boards or commissioners of public works. This was pointed out by Lord Hatherley in *Campbell's Trustees v. Leith Police Commissioners* (1870), L. R. 2 H. L. (Sc.) 1. "In all matters," said he, "regarding their jurisdiction they are, of course, allowed to exercise the powers given to them according to their judgment and discretion; but where they exceed those powers they are immediately restrained by the Courts of law, who hold a strict hand over those to whom the Legislature has entrusted large powers, and take care that no injury is done by an extravagant assertion of them" (n).]

Contracts  
*ultra vires* are  
in all cases  
invalid.

(a) [And if incorporated companies make contracts which are *ultra vires*, and consequently invalid, such contracts cannot be made valid by any action on the part of the shareholders, even if such action be unanimous. "The privilege of contracting as a corporation," said Archibald, J., in *Riche v. Ashbury Carriage Co.* (1874), L. R. 9 Ex. 224, 291, "is conferred only subject to the express directions of the Act, of which it seems to me to be the policy as well as the true construction to ignore (so to speak) the existence of the corporation and the power of the shareholders, even when unanimous, to contract or act in its name for any purpose substantially beyond or in excess of its objects as defined by the memorandum of association." This question was discussed at great length in *Ashbury Carriage Co. v. Riche* (1875), L. R. 7 H. L. 653 (o). In that case it appeared that a company had been incorporated for a certain purpose which was specified in their memorandum of association, but they had entered into

(n) See also *Mountcashell (Earl of) v. O'Neill (Viscount)* (1854), 5 H. L. C. 937, 2 Jur. N. S. 1030, a decision on the Irish Act 23 & 24 Geo. 3, c. 39.

(o) As to the principles enunciated in this case, Lord Selborne said in *Att.-Gen. v. Great Eastern Ry.* (1880), 5 App. Cas. 473, 478: "It appears to me to be important that the doctrine of *ultra vires*, as it was explained in that case, should be maintained. But this doctrine ought to be reasonably, and not unreasonably, understood and applied, and that whatever may be fairly regarded as incidental to, or consequential upon, those things which the Legislature has authorised ought not (unless expressly prohibited) to be held, by judicial construction, to be *ultra vires*." See also *dicta* of Lord Blackburn at p. 481; and *Att.-Gen. v. Mersey Rail. Co.*, (1906) 1 Ch. 811; and *Att.-Gen. v. Manchester Corporation*, (1906) 1 Ch. 643; and *ante*, p. 211. *Ashbury's case* seems to overrule the opinion of Blackburn, J., in *Taylor v. Chichester Rail. Co.* (1867), L. R. 2 Ex. 356, 379, that a shareholder may waive his right to object to the doing by a company of an unauthorised act, at any rate so far as it covers the case of *ultra vires* contracts.

certain contracts which were *ultra vires*. It was argued, however, that inasmuch as these contracts had been ratified and adopted by the whole body of the shareholders they had become binding on the company. But it was held by the House of Lords that the Act under which they had been incorporated had been passed, not only for the benefit of the shareholders, but also for the protection of the public. The Act only permitted the company to make contracts of a particular kind, but if they disregarded the Act of Parliament and went beyond the powers given them by it, as Lord Hatherley said, "no amount of ratification or confirmation by individual shareholders could give validity to the contract in question." "This contract," said Lord Cairns, "was entirely beyond the objects in the memorandum of association; it is not, therefore, a question whether the contract ever was ratified or not. It was a contract void at the beginning because the company could not make the contract. If every shareholder of the company had said, 'This is a contract which we authorise the directors to make,' the case would not have stood in any different position from that in which it stands now, for the shareholders would thereby, by unanimous consent, have been attempting to do the very thing which, by the Act of Parliament, they were prohibited from doing."]

"If persons . . . acting in the execution of a public trust or for the public benefit do an act which they are authorised by law to do and do it in a proper manner (*p*), though the act so done works a special injury to a particular individual the individual injured cannot maintain an action. He is without a remedy unless a remedy is provided by the statute" (*p*).

(b) There is no doubt that "if on the true construction of a statute it appears to be the intention of the Legislature that powers should be exercised, the *proper* exercise of which may occasion a nuisance to the owners of neighbouring land, and that this should be free from liability to an action for damages, or an injunction to prevent the continued proper exercise of the powers, effect must be given to the intention of the Legislature" (*q*). But to lead to this result there must be some element of compulsion or indication of an intention to interfere with private rights (*r*). On this principle the House of Lords decided that a nuisance caused by a cattle station, though a nuisance at common

Rights of private persons may be infringed in exercising statutory powers, but only so far as is absolutely necessary.

(*p*) *East Fremantle Corporation v. Annois*, (1902) A. C. 213, 217, Lord Macnaghten, referring to *British Cast Plate Manufacturing Co. v. Meredith* (1792), 4 T. R. 794; see also *Canadian Pacific Rail. Co. v. Roy*, (1906) A. C. 220. This rule excludes remedy by injunction as well as by action for damages: *Hammer-smith Rail. Co. v. Brand* (1869), L. R. 4 H. L. 171, 215, Lord Cairns.

(*q*) *L. B. & S. C. R. v. Truman* (1885), 11 App. Cas. 45, at p. 60, Lord Blackburn; cf. *Rapier v. London Tramways Co.*, (1893) 2 Ch. 588; *Shelfer v. City of London Electric Lighting Co.*, (1895) 1 Ch. 287, 313, Lindley, L.J.

(*r*) Per Bowen, L.J., approved by Lord Blackburn in *L. B. & S. C. R. v. Truman*, *loc. cit.* p. 63. In *Metropolitan Asylums District Managers v. Hill* (1881), 6 App. Cas. 582, the statutes under discussion involved no element of compulsion nor any indication of intention to interfere with private rights.

law, was not actionable, as the station was properly constructed and managed, and nothing had been done which was not incidental and necessary to the carrying of the cattle traffic on the railway. The powers must be properly exercised, *i.e.*, *bonâ fide*; with judgment and discretion (s) and without negligence. ["While it is thoroughly well established that no action will lie for doing that which the Legislature has authorised, if it be done without negligence, although it does occasion damage to some one . . . an action does lie for doing that which the Legislature has authorised if it be done negligently. And if by a reasonable exercise of the [statutory] powers the damage could be prevented, it is 'negligence' not to make such reasonable exercise of the powers" (t).] The case of *L. B. & S. C. R. v. Truman* was explained by the Judicial Committee in *Canadian Pacific Rail. Co. v. Parke*, (1899) App. Cas. 535, 546, as resting on the view of the House of Lords, "That the provisions of the Act which related to the acquisition and use of the yard were intended by the Legislature to be imperative, in the same sense as its provisions relating to the use of the railway, and that no negligence had been shown." But in the Canadian case it was laid down that wherever, according to the sound construction of a statute, the Legislature authorises a proprietor to make a particular use of his land, and the authority given is in the strict sense of the law permissive merely and not imperative, the Legislature must be held to have intended that the use sanctioned is not to be in prejudice of the common law rights of others (u). [Not only will an action lie for negligence in the exercise of statutory powers, but also inasmuch as in the exercise of statutory powers both public and private rights may be and are infringed, the persons to whom these powers are granted may not only be restrained from exceeding those powers, but also from infringing upon the rights of other persons in a greater degree than is absolutely necessary for the purpose of effectuating the object for which the powers have been entrusted to them. Thus, in *R. v. Kerrison* (1815), 3 M. & S. 526, certain commissioners were authorised by statute to make a river navigable, and for that purpose to cut the soil of any persons in order to make a new channel. By virtue of this power they cut through a highway and rendered it impassable; consequently it became necessary to build a bridge over the cut, and the question arose whether these commissioners were liable or not to keep this bridge in repair. The Court held that they were liable. "The Legislature," said Lord Ellenborough, "intended that, so far as

(s) *Galloway v. Corporation of London* (1864), 2 De G. J. & S. 213, 229, Turner, L.J.

(t) Per Lord Blackburn, in *Geddes v. Proprietors of Bann* (1878), 3 App. Cas. 430, 455; followed in *Canadian Pacific Rail. Co. v. Roy*, (1902) A. C. 220, 229; cf. *Lambert v. Lovestoft Corporation*, (1901) 1 K. B. 790; see Beven, *Negligence* (2nd ed.), 343 *et seq.*

(u) *Approving Metropolitan Asylums District v. Hill* (1881), 6 App. Cas. 193.

regards making the river navigable and cutting new channels for that purpose, neither public nor private rights should stand in their way; but still they must make good to the public in another shape the means of passage over such ways as they were empowered to cut through" (x). This principle was also acted upon in *Oliver v. North-Eastern Rail. Co.* (1874), L. R. 9 Q. B. 406, 409. In that case the question was whether or not the railway company were bound to keep a level crossing in a proper state for the passage of traffic over it. The Court held that they were. "Where persons," said Blackburn, J., "are authorised by statute to create what would otherwise amount to an indictable nuisance, they are bound, without any express enactment, to put and keep up for the public a proper substitute for the old way,"] and this view is confirmed by the House of Lords, so far as the creation of the nuisance is necessarily involved in doing what is authorised (y). "When statutory powers are conferred," said Cockburn, C.J., in *R. v. Bradford Navigation Co.* (1865), 6 B. & S. 631, at p. 648, "under circumstances in which they may be exercised with a result not causing any nuisance, and new and unforeseen circumstances arise which render the exercise of them impossible without causing one, and so contravening the law of the land, the persons exercising them are liable to indictment." And where interference with private property is authorised by statute, the person authorised to interfere must strictly adhere to the powers conferred, do no more than the statutes have sanctioned, and proceed by the mode (if any) indicated by the Act. But no one, except through the Attorney-General, can interfere in case of breach of the statutory terms of the sanction unless he can show a private damage (z).

(c) [In deciding what may be done under statutory powers, Courts of law will always take into consideration the objects for which the statutory powers have been conferred. If the powers are conferred in order to enable a body of adventurers like a railway company to construct works which, although of public utility, will or ought to yield to the constructors a lucrative return, those adventurers will always be compelled to confine their operations strictly to the purposes contemplated by the enabling statute, whereas if the powers are granted to some public body, like a corporation or vestry, solely to enable them to carry out some work of public utility or necessity, like making a new street or constructing a sewer, more latitude will be allowed in the exercise of the powers which have been

Objects for which powers are conferred to be considered in deciding whether they have been exceeded or not.

(x) Cf. *Lancashire and Yorkshire Rail. Co. v. Mayor, &c. of Bury* (1889), 14 App. Cas. 417.

(y) *Metropolitan Asylums (District of) v. Hill* (1881), 6 App. Cas. 193, as explained in *L. B. & S. C. R. v. Truman* (1885), 11 App. Cas. 45, 57, by Lord Selborne; and in *Canadian Pacific Rail. Co. v. Parke* (1899), App. Cas. 535.

(z) *Liverpool (Mayor of) v. Chorley Waterworks Co.* (1849), 2 De G. M. & G. 852.

granted. This distinction was clearly pointed out in *Galloway v. Mayor, &c. of London* (1866), L. R. 1 H. L. 34 (a). In that case the Corporation of London had been entrusted with powers to take land compulsorily in order to make certain public improvements in the City. Under these powers they were proposing to take more land than they absolutely required, whereupon the plaintiff filed a bill for an injunction to restrain them from so doing, on the ground that they were exceeding the powers which had been granted to them. "The case of the appellant, Mr. Galloway," said Lord Cranworth, "rested on a principle well recognised, and founded on the soundest principles of justice. The principle is this: that when persons embark in great undertakings for the accomplishment of which those engaged in them have received authority from the Legislature to take compulsorily the land of others, making to the latter proper compensation, the persons so authorised cannot be allowed to exercise the powers conferred on them for any collateral object, that is, for any purposes except those for which the Legislature has invested them with extraordinary powers. The necessity for strictly enforcing this principle became apparent when it became an ordinary occurrence that associations should be formed of large numbers of persons possessing enormous pecuniary resources, and to whom are given powers of interfering for certain purposes with the rights of private property. In such a state of things it was very important that means should be devised whereby the Courts, consistently with the ordinary principles on which they act, should be able to keep such associations or companies strictly within the powers, and should prevent them, when the Legislature has given them power to interfere with private property for one purpose, from using that power for another purpose. Lord Cottenham in numerous instances (b) interfered in such cases; and the principle has been cordially approved of and acted on in all the Courts of law (c) and equity, and has been frequently recognised and confirmed in this House. It has become a well-settled head of equity that any company authorised by the Legislature to take compulsorily the land of another for a definite object, will, if attempting to take it for any other object, be restrained by the injunction of the Court of Chancery from so doing. . . . But the Legislature, in providing for such an object as that of improving the metropolis, has to deal with a subject totally different from that of enabling a body of adventurers to form a railway. . . . A railway would become the property of the speculators and would itself repay them by the tolls levied on it. . . . But in undertaking improvements in the metropolis the matter is totally

(a) Followed in *Lyon v. Fishmongers' Co.* (1876), 1 App. Cas. 669.

(b) *E.g. Webb v. Manchester and Leeds Rail. Co.* (1839), 1 Rail. Cas. 576, 599.

(c) See *Davison v. Gill* (1800), 1 East, 63, Lord Kenyon, C.J.



different. . . . The corporation will necessarily have incurred a very great expense for which they can get no return. The new and improved street is dedicated to the public, and, unlike the railway, yields no profit to those by whom it has been made. Consequently, the Legislature trusted the respondents to deal with the whole property in the manner which should be considered most conducive to the public interest, and it does not seem to me to be unreasonable to suppose that the Legislature left it to the respondents to judge of the best means of carrying into effect the duties entrusted to them.”]

(d) [If the Legislature gives a public company power to take certain lands, which are specially described in their Act, for the purpose of their undertaking, it is true that, as Lord Cranworth said in *Stockton, &c., Rail. Co. v. Brown* (1860), 9 H. L. C. 246, 256, “it constitutes them the sole judges as to whether they will or will not take these lands, provided only that they take them *bonâ fide*, with the object of using them for the purposes authorised by the Legislature, and not for any sinister or collateral purpose.” But it is not sufficient for the company to make a mere statement that the purposes for which they are about to exercise their power of taking lands are within the contemplation of the Act; they must do more than this, they must be prepared with satisfactory evidence to prove this to a Court of justice if they are called upon to do so. Thus, in *Flower v. London, Brighton & S. C. Rail. Co.* (1865), 2 Dr. & Sm. 330, Kindersley, V.-C., held that the mere affidavit of the company’s engineer that the land about to be compulsorily taken from the plaintiff was required for the purposes of the railway was not sufficient, but the purposes for which the company desired to take the land must be fully and particularly set out, so that a Court of justice may be in a position to try the question whether the lands are fairly and *bonâ fide* wanted for the purposes of the railway (d).]

Statutory corporation must show that powers to be exercised are within the statute.

[But although, if powers are given by Act of Parliament they must be exercised strictly and not extended, still, they are not to be curtailed. Thus, in *R. v. South-Eastern Rail. Co.* (1853), 4 H. L. C. 471, where the company’s Act gave them an option, a mandamus, ordering them to do one of the two things without showing that it had become impossible for them to do the other, was quashed. So, in *London and Blackwall Rail. Co. v. Limehouse Board of Works* (1857), 26 L. J. Ch. 164, where the company’s Act, after reciting that “plans, &c., describing the land intended to be taken for the purpose of widenings, enlargements, and for stations, works, and conveniences to be connected therewith . . . had been deposited with the clerks of the peace,” empowered the company to widen and enlarge their

Powers not to be curtailed.

(d) On this point see also Cripps on Compensation (5th ed.), 29; Hodges on Railways (7th ed.), vol. i. p. 163; *Lewis v. Weston-super-Mare L. B.* (1888), 40 Ch. D. 55; *Stroud v. Wandswoth L. B.*, (1894) 2 Q. B. 1.

railway and other works in and upon the lands delineated on the plans, it was held that this power authorised the building of a station upon the lands described, and not only such works as were necessary for merely widening the railway, the station being necessary for the public convenience.]

Statutory powers of interference with property must be exercised within a reasonable time.

[Powers conferred by Act of Parliament must, as a general rule, be exercised within a reasonable time after notice has been given to the persons whose property will be affected by their exercise, otherwise the notice will be liable to be treated as being no longer efficacious.] Where powers are given to take lands compulsorily for the execution of works, the exercise of powers must be *bonâ fide* commenced within the time limited for the completion of the works.

In *Tiverton Rail. Co. v. Loosemore* (1884), 9 App. Cas. 480, Earl Cairns said (at p. 489): "I am disposed to think [as I was disposed to think in *Richmond v. North London Rail. Co.* (1868), 3 Ch. App. 679] that if nothing more was done [within the time for completing the works, than giving the notice to treat], and the company have slept on their rights, and certainly if the delay cannot be explained, they should be held to be disabled from going on with any compulsory purchase, and in such case the landowner should, as I think, be held to be disabled also."

This question becomes, in substance, a question of the duration of the powers of the Act in question.

Statutory powers not assignable without statutory permission.

(e) [Another peculiarity with regard to powers conferred by statute may be here noticed, viz., that such powers cannot be assigned without express statutory permission to do so. This question has often arisen in disputes between railway companies. Thus, in *Great Northern Rail. Co. v. East Central Railway* (1851), 9 Hare 306, 311, Turner, V.-C., declined to enforce an agreement which had been made between these two companies, on the ground that it was void as being "an entire delegation of all the powers conferred by Parliament on the defendants," and "an attempt to carry into effect without the intervention of Parliament what cannot lawfully be done except by Parliament in the exercise of its discretion with reference to the interests of the public" (e).] Upon this principle Lord Chelmsford in *London, Brighton & S. C. Rail. Co. v. London and S. W. Rail. Co.* (1859), 4 De G. & J. 362, 388, described certain agreements made between the parties to the suit as "ingeniously and carefully worded with the object of evading the objection, which must be well known to exist, to the transfer by one railway company to another of the rights and powers conferred by the Legislature."

4. Those enabling Acts which give power to make regulations, bylaws, &c., are dealt with separately in Ch. III. *post*, p. 256.

(e) See *Richmond W. W. v. Richmond Vestry* (1876), 3 Ch. D. 82, 99, Malins, V.-C.

5. [If a power is given to the Crown by statute for the purpose of enabling something to be done which is beyond the scope of the royal prerogative, it is said to be an important constitutional principle that such a power, having been once exercised, is exhausted and cannot be exercised again (*f*). Thus art. 1 of the Union with Ireland Act (1800), 39 & 40 Geo. 3, c. 67, empowered the Crown to assume "such royal style and titles as His Majesty by his royal proclamation shall be pleased to appoint." This power was exercised immediately after the passing of that Act of Union by proclamation of January 1, 1801 (*g*), and, having been once exercised, the power was exhausted. Therefore, when it was again in 1876 thought expedient to alter the royal style, it was necessary to pass another Act of Parliament in order to enable this alteration to be made, and the Royal Titles Act, 1876 (39 & 40 Vict. c. 10), was accordingly passed (*h*).] But this rule seems to have been to some extent, if not wholly, abrogated by the Interpretation Act, 1889, s. 32, which provides that where an Act passed after 1889 confers a power, then, unless a contrary intention appears, the power may be exercised from time to time as occasion requires, and that where the power is conferred on the holder of an office, it, unless a contrary intention appears, may be exercised by the holder for the time being of the office.

Rule as to exercise of statutory power granted to the Crown.

6. [When statutes are passed for the purpose of enabling something to be done, they are usually expressed in permissive language, that is to say, it is enacted that "it shall be lawful," &c., or that "such and such a thing *may* be done." "*Primâ facie*," as Crompton, J., said in *Re Newport Bridge* (1859), 2 E. & E. 377, 380, "these words import a discretion, and they must be construed as discretionary unless there be anything in the subject-matter to which they are applied, or in any other part of the statute, to show that they are meant to be imperative." "The words, 'it shall be lawful' are words," said Lord Cairns in *Julius v. Bishop of Oxford* (1879), 5 App. Cas. 214, 222, "making that legal and possible which there would otherwise be no right or authority to do. They confer a faculty or power, and they do not of themselves do more than confer a faculty or power. But there may be something in the nature of the thing empowered to be done, something in the object for which it is to be done, something in the conditions under which it is to be done, something in the title of the persons for whose benefit the

Obligatory and permissive Acts.

(*f*) *R. v. Ashforth* (1892), 8 T. L. R. 283.

(*g*) See Stat. R. and O. Revised (ed. 1904), vol. i. tit. Arms, &c., p. 1.

(*h*) [It was argued at the time in several of the newspapers that the proclamation which was issued (on April 28th, 1876, Stat. R. and O. Revised (ed. 1904), vol. i. tit. Arms, &c., p. 107) contravened this principle, inasmuch as at the end of the proclamation it was stated that money coined after the proclamation should be deemed to be lawful money *notwithstanding* such addition, "until our pleasure shall be further declared thereon." It was assumed that a further proclamation might be issued on the subject at some future date.]

power is to be exercised, which may couple the power with a duty, and make it the duty of the person in whom the power is reposed to exercise that power when called upon to do so. These words being, according to their natural meaning, permissive or enabling words only, it lies upon those who contend that an obligation exists to exercise this power to show in the circumstances of the case something which, according to the principles I have mentioned, creates this obligation."

Permissive  
language in  
statutes under  
certain cir-  
cumstances  
held obli-  
gatory.

(a) It is, however, a well-recognised canon of construction that, as Lord Cairns further said in *Julius v. Bishop of Oxford* (1879), 5 App. Cas. 214, 225 (i), "where a power is deposited with a public officer for the purpose of being used for the benefit of persons who are specifically pointed out, and with regard to whom a definition is supplied by the Legislature of the conditions upon which they are entitled to call for its exercise, that power ought to be exercised and the Court will require it to be exercised." ["So long ago," said the Court in *R. v. Bishop of Oxford* (1879), 4 Q. B. D. 245, 258, "as the year 1693, it was decided in the case of *R. v. Barlow* (1693), 2 Salk. 609, that when a statute authorises the doing a thing for the sake of justice or the public (j) good, the word 'may' means 'shall,' and that rule has been acted upon to the present time . . . and of course the same rule will apply to the words 'it shall be lawful.'"] "That," said James, L.J., in *Re Neath and Brecon Railway* (1874), 9 Ch. App. 264, "is the usual courtesy of the Legislature in dealing with the judicature." But, when so employed, this expression, "it shall be lawful," as James, L.J., went on to say, "means in substance that it shall not be lawful to do otherwise." Thus, in *McDougal v. Paterson* (1851), 6 Ex. 337, note, it appeared that the 13 & 14 Vict. c. 61, s. 13, enacted that, with regard to certain actions, the Court in which the action is brought "may direct that the plaintiff shall recover his costs." The Court decided that this enactment was not permissive, but obligatory. "When," said they, "a statute confers an authority to do a judicial act in a certain case, it is imperative on those so authorised to exercise the authority, when the case arises and its exercise is duly applied for by a party interested, and having the right to make the application. For this reason we are of opinion that the word 'may' is not used to give a discretion, but to confer a power upon the Court and judges, and that the exercise of such power depends, not upon the discretion

(i) Cf. *Leighton v. Bishop of London*, (1891) A. C. 666.

(j) See hereon Wilberforce on Statutes, 196—200. In *Julius v. Bishop of Oxford* (1879), 5 App. Cas. 214, 244, Lord Blackburn takes exception to the word "public." "If by that," said he, "it is to be understood, either that enabling words are always compulsory where the public are concerned, or are never compulsory except where the public are concerned, I do not think either was meant. . . . In fact, in every case cited (where it has been held that the power must be exercised) it has been on the application of those whose private rights required the exercise of the power."

of the Court or judges, but upon the proof of the particular case out of which such power arises" (k). So, also, in *Morrisse v. Royal British Bank* (1856), 1 C. B. N. S. 67, the question was whether 7 & 8 Vict. c. 113, s. 13, gave the Court any discretion. The words of the section are, "In cases provided by this Act for execution on any judgment . . . such execution *may be issued by leave* of the Court or of a judge . . . upon motion or summons for a rule to show cause . . . and *it shall be lawful* for such Court or judge to make absolute or discharge such rule . . . or to make such order therein as to such Court or judge shall seem fit." As to these words, Cockburn, C.J., said in his judgment: "I was at first disposed to doubt whether the Court did not possess some discretionary power under this section . . . but I reluctantly yield to the weight of authority." And Willes, J., added: "The 13th section only defines the mode of enforcing the right. The words in the section 'It shall be lawful,' &c., are a mere expression of the power that is inherent in the Court, *Expressio eorum que tacite insunt nihil operatur*. The meaning is that the Court shall make an order, not according to attributive justice, but according to the usage and practice of the Court."]

[Language *primâ facie* permissive may not only make it imperative upon the Court to do the thing which the enactment states that it *may* do, but it also prohibits that particular thing from being done by the Court in any other way. This was pointed out by Jessel, M.R., in *Taylor v. Taylor* (1876), 1 Ch. D. 426, 431. In that case it appeared that by 19 & 20 Vict. c. 120, s. 16, "any person entitled to the possession of the rents and profits of any settled estates for a term of years . . . *may* apply to the Court by petition in a summary manner to exercise the powers conferred by the Act." "When," said Jessel, M.R., "a statutory power is conferred for the first time upon a Court, and the mode of exercising it is pointed out, it means that no other mode is to be adopted. This section says that the proceeding is to be by petition. It is *enabling*, I know, in form that the application may be by petition, but *no other* process can be adopted. . . . In the same way when a statute says who is the person to petition, that person, *and no others*, shall be entitled."]

["It has been clearly settled," said Lord Wensleydale in *Edinburgh, Perth, &c. Rail. Co. v. Philip* (1857), 2 Macq. H. L. (Sc.) 526, "though in the first instance there was some doubt about it, that enabling Acts are not compulsory"; in other words, permissive language, when used in an Act of Parliament, passed for the purpose of enabling works, such as railways, to be carried out, is not held to be obligatory, so far as to subject

(k) [Adopted in *Crake v. Powell* (1852), 2 E. & B. 210;] cf. *Re Eyre and Corporation of Leicester*, (1892) 1 Q. B. 136, 141.

the undertakers to a mandamus to complete the undertaking authorised (l). This question was decided in the Exchequer Chamber in the case of *York and North Midland Rail. Co. v. R.* (1853), 1 E. & B. 858. In that case the Exchequer Chamber laid it down distinctly for the first time (reversing the decision of the majority of the judges in the Queen's Bench), that a statute enacting that "it shall be lawful" for a company to make a railway, did not render it compulsory for the company forthwith to make the railway, but left it optional with them to do so or not at any time as they pleased. Such Acts usually contain both permissive language and imperative language, and it is important to observe the distinction. "The language," said Erle, J., "in respect of making the railway is permissive, not imperative, the distinction between permissive and imperative language being maintained throughout the statutes on this subject. Imperative language is used when a clear duty is to be executed, and permissive language in common understanding would express that the matter is to be optional. Thus, the company are permitted at their option to take lands, turn roads, alter streams, and exercise other powers, and these matters are made lawful for them, but they are commanded to make compensation for lands taken, to substitute new roads for those they turn, and to perform other conditions relative to the exercise of the powers, and these matters are required from them" (m).] It is now not unusual to exact penalties for failure to complete an undertaking within the time limited by the special Act (n); and in the case of railway companies a parliamentary deposit is required (o).

If a work is once begun under a permissive Act not obligatory to finish it.

(b) [In *York and North Midland Rail. Co. v. R.* it was also argued that if an Act of Parliament gives to a person or a number of persons permission to do some work, such as taking land compulsorily and making a railway, it may very well be that, if they once commence to exercise those compulsory powers for the purpose of making their railway, they are bound to continue the work until they have completed their railway; in other words, as Jervis, C.J., said (at p. 860), "that a work, which in its inception is permissive only, becomes obligatory by part performance." This doctrine was partly recognised by Erle, J., in his judgment in the Court below, but the Court of Error said as to it as follows: "It is unnecessary here to determine

(l) The observations of the Judicial Committee in *Canadian Pacific Rail. Co. v. Parke*, (1899) A. C. 535, as to the imperative character of certain provisions in Railway Acts, do not seem to affect these decisions.

(m) This principle was applied in *Att.-Gen. v. Simpson*, (1901) 2 Ch. 671, 712, to the maintenance as well as to the construction of works under statutory authority subject to the observation that failure to do the work in respect of which a statutory toll was granted might affect the right to levy the toll.

(n) And see 2 Clifford (Private Bill Legislation), 778.

(o) See the Railway Construction Facilities Act, 1864 (27 & 28 Vict. c. 121), s. 4, and the Parliamentary Deposits and Bonds Act, 1892 (55 & 56 Vict. c. 27).

the abstract proposition that a work, which before it is begun is permissive, is, after it is begun, obligatory. We desire not to be understood as assenting to the proposition of Erle, J., that 'many cases may occur where the exercise of some of the compulsory powers may create a duty to be enforced by mandamus,' and, on the other hand, we do not say that such may not be the law." This point seems not to have been mooted since the decision in that case (*p*).]

(*p*) [In *Ex parte A Clergyman* (1873), L. R. 15 Eq. 154, it was held that a clergyman who had taken certain steps towards relinquishing his office under 33 & 34 Vict. c. 91, may change his mind and cancel the steps he has taken]; but see *Reichel v. Bishop of Oxford* (1889), 14 App. Cas. 259. [In *R. v. French* (1878), 3 Q. B. D. 187, it was held that an Act empowering a turnpike road to be made and tolls to be charged did not make it a condition precedent that the roads should be entirely completed before any tolls were levied.]

## CHAPTER III.

## SUBORDINATE LEGISLATION.

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Origin and  
definition.

1. THE law of the land, besides the common law and statute law, includes a great deal of what may be termed subordinate legislation.

Few statutes form a complete code in themselves as to all the details relating to the subject with which they deal, and “the increasing complexity of modern administration, and the increasing difficulty of passing complicated measures through the ordeal of parliamentary discussion, have led to an increase in the practice of delegating legislative power to executive authorities” (a).

[“It is no uncommon thing,” said the Judicial Committee in *R. v. Burah* (1878), 3 App. Cas. 889, 906, “to find legislation, conditional on the use of particular powers, or on the exercise of a limited discretion, entrusted by the Legislature to persons in whom it places confidence.” Thus, power is frequently granted by statute to enable rules, regulations or bylaws (b) to be made by some authority other than the Sovereign and Parliament in respect of some particular matter which is not provided for by the general law of the land.]

And at the present time it seems to be the settled policy of the Legislature to confine its efforts to the task of laying down general principles of law, and to delegate to a subordinate

(a) Ilbert, *Legislative Methods and Forms*, p. 37, where are stated the differences between British and foreign methods of legislation.

(b) *Post*, p. 268.



authority the power of making rules and orders for the purpose of settling the details of the procedure necessary for giving effect to the general principles.

The rules, regulations or bylaws made under statutory powers are most compendiously described by the term subordinate legislation (*c*). Though the legislatures of British possessions are not sovereign legislative bodies, Acts or ordinances passed by them are not subordinate legislation in the sense here used, and are dealt with separately (*post*, c. ix). The forms of subordinate legislation to be dealt with in this chapter are the rules, orders, &c. made by persons or corporations within the United Kingdom under legislative authority of Parliament.

2. The following general rules (*d*) apply to subordinate legislation :—

General  
statutory  
provisions.

Where an Act (public, local and personal, or private) passed after 1889 is not to come into operation immediately on the passing thereof, and confers power to make any appointment, to make, grant, or issue any instrument, that is to say, any Order in Council, order, warrant, scheme, letters patent, rules, regulations or bylaws, to give notices, to prescribe forms, or to do any other thing for the purposes of the Act, that power may, unless the contrary intention appears, be exercised at any time after the passing of the Act, so far as may be necessary or expedient for the purpose of bringing the Act into operation at the date of the commencement of the Act, subject to this restriction, that any instrument made under the power shall not come into operation until the Act comes into operation, unless the contrary intention appears in the Act, or the contrary is necessary for bringing the Act into operation (*e*).

Time for  
exercising  
powers.

In Acts prior to 1890 which authorise the making of rules, regulations or bylaws, a power of rescission or variation must, it would seem, be given expressly or by necessary implication in order to authorise any alteration of the rules, &c., when once made; and without such power the rule-making authority is *functus officio* on the first exercise of the power (*f*).

Revocation.

But “where an Act (public, local and personal, or private) passed after 1889 confers a power to make any rules, regulations, or bylaws, the power shall, unless the contrary intention appears, be construed as including a power, exercisable in the like manner, and subject to the like consent and conditions, if any, to rescind, revoke, amend, or vary (*g*) the rules, regulations,

(*c*) The nature of the legislative authority thus delegated or conferred is discussed in Dicey, *Law of the Constitution* (6th edit.), c. ii., and Ilbert, *Methods and Forms of Legislation*, c. iii.

(*d*) See *Jones v. Robson*, (1901) 1 K. B. 673.

(*e*) Interpretation Act, 1889, ss. 37, 39, Appendix C.

(*f*) *Vide ante*, p. 251.

(*g*) If subsequent bylaws are inconsistent with former bylaws, the latter, if validly made, prevail: *Gosling v. Green*, (1893) 1 Q. B. 109.

or bylaws" (*h*). This rule does not extend to Orders in Council, orders, warrants, schemes, or letters patent (*i*).

The result of this enactment is to permit revocation of many kinds of rules and bylaws without reference to Parliament. But the revocation and the substituted rules are as much subject to judicial examination as the original rules.

Interpreta-  
tion.

"Where any Act (public, local and personal, or private) passed before or after 1889 confers power to make, grant, or issue any instrument—that is to say, any Order in Council, order, warrant, scheme, letters patent, rules, regulations, or bylaws—expressions used in the instrument, if it is made after 1889, shall, unless the contrary intention appears, have the same respective meanings as in the Act conferring the power" (*j*).

This enactment adopts the rule already established, that any particular term or word used in a rule or bylaw should *prima facie* receive the same interpretation as would be applied to that word or term when used in the Act under the powers of which the bylaw is framed. But there may be occasions when it is obvious that the words are used in the bylaw in a different sense to that in which they are used in the Act (*k*).

Distinction  
from statute  
law.

3. The initial difference between subordinate legislation (of the kind dealt with in this chapter) and statute law lies in the fact that a subordinate law-making body is bound by the terms of its delegated or derived authority, and that Courts of law, as a general rule, will not give effect to the rules, &c. thus made, unless satisfied that all the conditions precedent to the validity of the rules have been fulfilled. The Courts therefore (1) will require due proof that the rules have been made and promulgated in accordance with the statutory authority, unless the statute directs them to be judicially noticed (*l*); (2) in the absence of express statutory provision to the contrary, may inquire whether the rule-making power has been exercised in accordance with the provisions of the statute by which it is created, either with respect to the procedure adopted, the form or substance of the regulation (*m*), or the sanction, if any, attached to the regulation (*m*): and it follows that the Court may reject as invalid and *ultra vires* a regulation which fails to comply with the statutory essentials. In *Crichton v. Duncan* (1892), 29 Sc. L. R. 448, the Court of Session in Scotland decided an order of the Lords of Council on Education regulating elections to school boards to be *ultra vires* and void (*n*).

(*h*) Interpretation Act, 1889, ss. 32 (3), 39, Appendix C.

(*i*) This appears from the deliberately different wording of sects. 32 (3) and 37 of the Interpretation Act, 1889.

(*j*) Interpretation Act, 1889, s. 31.

(*k*) *Blashill v. Chambers* (1885), 14 Q. B. D. 485, Grove, J.

(*l*) *Institute of Patent Agents v. Lockwood*, (1894) A. C. 347.

(*m*) This jurisdiction corresponds in substance to that exercised by the Supreme Court of the United States on questions of constitutional limitation.

(*n*) Cf. *Slattery v. Naylor* (1888), 13 App. Cas. 446, 452.

The amount of deference paid by the Courts to this class of legislation depends on the character of the authority of the delegated lawgiver, and the intention expressed or to be implied from the language of the Legislature as to the extent of authority or respect to be attached to the instrument in question.

4. "Subordinate legislation" falls under two main heads:— Classification.

(a) Statutory rules;

(b) Bylaws or regulations made—

(i) by authorities concerned with local government;

(ii) by persons, societies or corporations (whether by common law or statute) who are conducting commercial or other enterprises, whether of a public character or not.

5.—(a) Statutory rules are defined by the Rules Publication Act, 1893 (56 & 57 Vict. c. 66), as "Rules, regulations, or bylaws made under any Act of Parliament which Statutory rule defined.

"(a) Relate to any Court in the United Kingdom, or to the procedure, practice, costs or fees therein, or to any fees or matters applying generally throughout England, Ireland, or Scotland; or

"(b) Are made by His Majesty in Council, the Judicial Committee, the Treasury, the Lord Chancellor of Great Britain, or a Secretary of State, the Admiralty, the Board of Trade, the Local Government Board for England or Ireland, the Chief Secretary of State, or any other Government department."

Until 1893 (o) the London, Edinburgh, and Dublin Gazettes were the received official channels for the publication of all the subordinate legislation of the land effected under the authority of Acts of Parliament. But in 1890 the Treasury authorised the publication, under the superintendence of the Stationery Office, of an annual volume containing *in extenso* all the more important rules and orders made during each year by different departments of State, with tables enumerating the less important rules and orders. Authentica-  
tion and  
proof.

All statutory rules made after December 31st, 1890, are at once sent to the King's printer of Acts of Parliament, and, under regulations made by the Treasury, with the concurrence of the Lord Chancellor and the Speaker of the House of Commons, are numbered, and save as provided by the regulations (p) are printed and sold by the King's printer. And in the case of any rules, &c. so dealt with, publication or notification in the Gazette is rendered unnecessary, and instead a

(o) *Vide post*, p. 263.

(p) Made Aug. 9, 1894. See St. R. & O. Revised (edit. 1904), vol. xi., tit. "Statutory Rule." These regulations exclude from their scope rules of a purely executive or local character; but the annual volume contains lists of such regulations.

notice is gazetted that the rules have been made (which operates as promulgation), and of the place where copies may be purchased (*g*).

Until the publication in 1891 (under the supervision of the Statute Law Revision Committee) of an index to the innumerable regulations and orders made by the various departments of Government, it was impossible to realise, or even to find out without great research, what rules or regulations were in force under any given Act. An official index brought down to 1903 of all such regulations and rules has been prepared under the editorship of Mr. A. Pulling, which, with the aid of the series of Statutory Rules Revised (*r*) and the annual volumes of statutory rules and orders, enormously increases the accessibility of the growing body of subordinate legislation.

Proclama-  
tions, depart-  
mental orders,  
&c.

The effect of the numerous enactments in force in 1891 (*s*) relating to proof of subordinate legislation was thus summed up in sect. 21 of the Evidence Bill, 1891:—"Evidence of any proclamation, order, warrant, licence, certificate, rule, regulation, or other document issued by (*His*) Majesty or by the Privy Council, or by any department or officer mentioned in the first column of the First Schedule to this Act, or by the Lord Lieutenant of Ireland, either alone or acting with the advice of the Privy Council in Ireland, may be given as follows:—

- "(a) By the production of a copy of the London, Edinburgh, or Dublin Gazette, as the case may be, containing a copy of the document; or
- "(b) By the production of a copy of the document printed by the King's printer in England, or by the King's printer in Ireland, or under the superintendence or authority of (*His*) Majesty's Stationery Office, or where the question arises in a Court in any British possession, of a copy printed under the authority of the legislature of that British possession;
- "(c) In the case of any document issued by (*His*) Majesty, or by the Privy Council in England or Ireland, or by the Lord Lieutenant, either alone or acting with the advice of the Privy Council in Ireland, by the pro-

(*g*) The volumes are admissible in evidence by virtue of 45 & 46 Vict. c. 9, s. 4. For an instance of their acceptance in a colony, see *R. v. Fos* (1895), 6 Queensland L. J. 215, a case under the Pacific Islanders Protection Act, 1872 (35 & 36 Vict. c. 19).

(*r*) 2nd edit., published in 1904.

(*s*) 31 & 32 Vict. c. 37, ss. 2, 3; 33 & 34 Vict. c. 14, s. 12 (5); 33 & 34 Vict. c. 75, ss. 83, 84; 33 & 34 Vict. c. 79, s. 21; 34 & 35 Vict. c. 70, s. 5; 38 & 39 Vict. c. 22, s. 9; 39 & 40 Vict. c. 79, s. 45; 40 & 41 Vict. c. 21, s. 51; 40 & 41 Vict. c. 53, s. 58; 45 & 46 Vict. c. 9, s. 4; 46 & 47 Vict. c. 52, s. 140; 47 & 48 Vict. c. 76, s. 15; 51 & 52 Vict. c. 25, s. 53; 52 & 53 Vict. c. 30, s. 7; 52 & 53 Vict. c. 63, s. 31; 57 & 58 Vict. c. 60, s. 720; 58 & 59 Vict. c. 9; 62 & 63 Vict. c. 33, s. 7; 62 & 63 Vict. c. 50, s. 21; 3 Edw. 7, c. 31.

duction of a copy or extract certified to be true by the proper officer of the Privy Council in England or Ireland, as the case may be, or by any one of the lords or others of the Privy Council in England or Ireland, as the case may be ;

“(d) In the case of any document issued by any department or officer mentioned in the first column of the First Schedule (*t*) to this Act, by the production of the document authenticated by the seal of the department or by the signature of the person specified in the second column of that Schedule in connection with that department or officer, or by the production of a copy of or extract from that document certified as true by that officer.”

## FIRST SCHEDULE.

### EVIDENCE OF DEPARTMENTAL ORDERS.

First Column.	Second Column.
Name of Department or Officer.	Name of Certifying Officer.
The Treasury .....	Any commissioner, secretary, or assistant-secretary of the Treasury.
The Admiralty .....	Any commissioner of the Admiralty or any secretary or assistant-secretary of the Admiralty.
Secretaries of State.....	Any secretary or under-secretary of State.
The Board of Trade .....	Any member of the Board or secretary or assistant-secretary of the Board, or any person authorised in that behalf by the President of the Board.
The Board of Education ....	Any member or secretary or assistant-secretary of the Board, or some person authorised by the President or some member of the Board to act on behalf of a secretary. The document must also bear the seal of the Board.
The Local Government Board.	Any member or secretary or assistant-secretary of the Local Government Board.
The Board of Agriculture (58 & 59 Vict. c. 9), and Fisheries (3 Edw. 7, c. 31, s. 1).	The President or any member or secretary or assistant-secretary of the Board, or any person authorised by the President to act on behalf of the secretary of the Board.
The Postmaster-General.	Any secretary or assistant-secretary of the Post-Office.

Most, if not all, statutory rules may be regarded as forming part of the general law, and as being legislative or executive acts, although they are the acts of a subordinate and delegated

(*t*) This schedule has been brought up to date (1906) by the insertion of departmental documents brought within the scope of the Act of 1886.

authority. In this respect they differ somewhat from by-laws (*u*), which are confessedly subordinate, and are subject to review as well as to interpretation by the Courts, but the difference is one of degree only, except in cases in which Parliament has expressly or impliedly forbidden the Courts to test the validity of a statutory rule (*v*).

The most salient examples of statutory rules are the Rules of the Supreme Court (*x*) (including the Crown Office Rules), the County Court Rules (*y*), the Summary Jurisdiction Rules, the Regulations to prevent Collisions at Sea (*z*), and many, if not most, Orders in Council.

Regulations  
by adminis-  
trative de-  
partments  
of State.

6. The validity of regulations, rules or orders made by executive or administrative departments of State depends, as already stated, on the due observation of the conditions imposed by statute as to their making, contents, and publication; and if the statutory conditions are not complied with the Court will treat the rules, &c. as invalid unless the conditions are merely directory, or the statute forbids inquiry.

Under certain statutes it is directed—

- (1) That Orders in Council, &c., made under the statute are to have the same effect as if enacted therein (*a*); or
- (2) That rules when made are to lie on the tables of both Houses of Parliament for a certain time (*b*); or
- (3) That the validity of the order, &c. shall not be judicially questioned (*c*).

The case of *Institute of Patent Agents v. Lockwood* (*d*) suggests that in the first of these cases “the proper canon of construction is to read the original Act and the subordinate legislation together as if they were one Act and were to be construed together”; and it is submitted that the same rule applies to cases (2) and (3) (*e*). But a difficulty would arise if the rule abrogated part of the statute or repealed another statute without clear authority.

(*u*) *Post*, p. 268.

(*v*) See *Wilnot v. Grace*, (1892) 1 Q. B. 812, 816.

(*x*) *Post*, p. 264.

(*y*) *Post*, p. 266.

(*z*) See *The Duke of Buccleuch*, (1891) App. Cas. 310.

(*a*) See *Baker v. Williams*, (1898) 1 Q. B. 23, 25, Wright, J., which deals with bylaws made under an Order in Council made under the Contagious Diseases (Animals) Act, 1878, which Order in Council was by sect. 58 to have the same effect as if enacted by the Act itself: cf. *Storey v. Graham*, (1898) 1 Q. B. 406, 411.

(*b*) *Vide post*, p. 263.

(*c*) The Extradition Act, 1870 (33 & 34 Vict. c. 52), s. 5, provides that an Order in Council duly published shall be conclusive evidence that the arrangement as to extradition with a foreign State to which it refers complies with the Act, and that its “validity shall not be questioned in any legal proceedings whatsoever.”

(*d*) (1894) App. Cas. 347, 359, Lord Herschell; but see remarks of Lord Morris, p. 365.

(*e*) See *Dale's case* (1881), 6 Q. B. D. 376, 455, Brett, L.J.

Such rules, while their contents may not be examined, nor their reasonableness or conformity in substance with the statutory authority challenged, by judicial authority, do not take effect unless they have been made and published as directed by the statute which authorises them. Thus, an order to take effect on gazetting would not be enforced unless gazetting was proved; and rules directed to lie on the tables of the Houses for a given period are not enforced unless it appears that this provision was a condition subsequent or merely directory (*f*), and not a condition precedent to their taking effect (*g*).

Reasonable-  
ness or con-  
formity in  
substance  
with the  
statutory  
authority  
challenged.

The Universities (Scotland) Act, 1889, appointed a commission charged with the duty of improving the administration of the Scottish Universities. Sect. 20 declared that ordinances made by the commissioners should not be effective until, *inter alia*, laid before Parliament. The commissioners made an order purporting to be made under the powers given by sect. 16 of the Act, and to affiliate University College, Dundee, to, and make it form part of the University of St. Andrews. The validity of this "order" was challenged in *Metcalfe v. Cox* (No. 1), (1895) A. C. 328, on the ground that the procedure prescribed by the statute had not been followed. In support of the validity of the order it was contended that the order was within the powers given by sect. 16, and that the provisions of sect. 20 as to ordinances did not govern orders made under sect. 16. The House of Lords held that the order was an ordinance; and that it appeared to be the general policy of the Legislature that all acts of the commissioners altering the constitution of a university, and necessarily affecting public or private interests, or both, should be attended by the precautions and safeguards prescribed by sect. 20 of the statute, and that the ordinance was invalid for want of due compliance with the prescribed procedure.

52 & 53 Vict.  
c. 55.

The Rules Publication Act, 1893 (56 & 57 Vict. c. 66), sects. 1, 2, 4, makes some very important regulations with respect to those statutory rules (*h*), which are made under a statute which directs that the rules are to be laid before Parliament after they have been made or have come into force (*h*) (but not

(*f*) In *Jones v. Robson*, (1901) 1 K. B. 673, it was held that the giving and publication by a Secretary of State of a notice under sect. 6 of the Explosives Regulation Act, 1896, was not a condition precedent to the validity of an order prohibiting the use of an explosive as dangerous, but directory only.

(*g*) The Prison Act, 1898 (61 & 62 Vict. c. 41), by sect. 2 directs that prison rules "shall not be made until a draft has lain before each House for not less than thirty days during which the House is sitting." The Parks, &c. Act, 1872 (35 & 36 Vict. c. 15), requires rules for the regulation of royal parks to be forthwith laid before both Houses *if Parliament be sitting*, or if not then within three weeks of the beginning of the then next ensuing Session: and the rules, if disapproved by either House within one month after being laid before Parliament, shall not be enforced. In the publication of such rules as statutory rules an effort is made to indicate when they were laid before Parliament.

(*h*) See the definition *ante*, p. 259.

when the rules or a draft must be before Parliament before they come into force) :—

1. At least forty days before making such rules notice of the proposal to make them, and of the place where copies of the draft rules may be obtained, must be given in the *London Gazette* for English rules and in the *Dublin Gazette* for Irish rules.
2. During the forty days any public body may obtain copies of the draft rules on payment of not more than 3*d.* per folio, and the rule-making authority, before finally settling the rules, must take into consideration any representations or suggestions made to them by a public body interested.
3. At the end of the forty days the authority may make the rules either amended in deference to the suggestions and representations or as originally drafted, and the rules come into force either forthwith or at the time therein prescribed.
4. Where the rule-making authority certifies that for urgency or any special reason the said rules should come into immediate operation they may make them as provisional rules, to continue in force only till rules have been made in accordance with (1), (2) and (3).

It has not been judicially determined whether compliance with these enactments is a condition precedent to the validity of the rules to which they refer, or whether they are merely directory.

Rules made  
by judges.

7. Rules made by the judiciary under statutory authority are subject to judicial examination in the same way and to the same extent as those made by the administrative or executive departments of State. In *King v. Henderson*, (1898) App. Cas. 720, the Judicial Committee quashed as *ultra vires* a rule purporting to be made under the N. S. Wales Bankruptcy Acts, 1887, 1888. Lord Watson said (p. 729) : “Now, the only power which the Court has to frame rules is conferred by s. 119 of the principal Act (of 1887), and it is strictly limited to rules for ‘the purpose of regulating any matter under this Act.’ In the opinion of their Lordships, a rule empowering a judge to make a declaration that no act of bankruptcy has been committed under the notice is in no sense a regulation either proved or calculated to carry out the objects of the Act. It is, in their opinion, the new creation of a jurisdiction which the Legislature withheld ; it is inconsistent with and so far repeals the plain enactments of the statute, and it takes away from creditors the absolute right which the statute gave them of founding a petition for a sequestration order upon the bankruptcy notice.”

The Rules of the Supreme Court take effect as part of the



Judicature Acts (*i*). They have the effect of an Act of Parliament, but must be construed in accordance with the spirit of the Judicature Acts (*k*).

They can not repeal or contradict express provisions in those Acts (*i*), but apparently may repeal any prior Act falling within the scope of the rule-making authority created by the Judicature Acts, it being presumed with reference to these rules that Parliament delegates its functions with reference to judicial procedure to a more competent authority.

Repeal of statutes by rules.

Like rules made under other Acts, if they have a meaning and effect inconsistent with the Judicature Acts they are, *pro tanto*, *ultra vires*. ["If a rule," said Hannen, J., in *Irving v. Askew* (1869), L. R. 5 Q. B. 208, 211 (*m*), "were really repugnant to the provisions of the Act, I should think that the rule, though made under the powers of the Act, would not override its enactments." And in *Ex parte Davis* (1872), 7 Ch. App. 526, 529, James, L.J., said (with reference to the Bankruptcy Rules, 1870): "The Act of Parliament is plain, the rule must be interpreted so as to be reconciled with it, or, if it cannot be reconciled, the rule must give way to the plain terms of the Act." And in *Richards v. Attorney-General of Jamaica* (1848), 6 Moore, P. C. 381, 398, the Court said with regard to certain rules which had been made under 3 & 4 Will. 4, c. 73: "It has been argued that these rules having been approved by the King in Council, have under the provisions of this statute the force of an Act of Parliament. . . . The words of these rules are no doubt very large, but, as they are made under the power of the Act and to provide for cases mentioned in the Act, we must look to the Act itself in order to construe them."]

It is doubtful whether even the wide rule-making authority given by the Judicature Acts permits the alteration of procedure so as to affect substantive rights, although there is no vested right in procedure. (See *post*, p. 327.)

The so-called Practice Rules made by the subordinate officers of the Supreme Court have slight, if any, independent validity (*n*), except so far as they are adopted by the judges as embodying the *cursus curiæ*, and even so cannot restrict the substantive provisions of an Act of Parliament or of a statutory rule (*o*).

\*(*i*) Judicature Act, 1875 (38 & 39 Vict. c. 77), s. 17; *Garnett v. Bradley* (1876), 3 App. Cas. 944, 964, Lord Blackburn. [As to the effect of the rules made under sect. 223 of the Common Law Procedure Act, 1852, see *Rowberry v. Morgan* (1854), 9 Ex. 730.]

(*k*) See *Schneider v. Ball* (1881), 8 Q. B. D. 701, 705, Bramwell, L.J.

(*l*) See *Hartmont v. Foster* (1881), 6 Q. B. D. 82, 85, Cotton, L.J., 86, Lindley, L.J.

(*m*) A decision on the County Court Rules, 1867. See also *In re a Solicitor* (1890), 25 Q. B. D. 17, 23, Coleridge, C.J.; *Hacking v. Lee* (1860), 29 L. J. Q. B. 204, 206, Crompton, J.

(*n*) *Hume v. Somerton* (1890), 25 Q. B. D. 239, 243, Charles, J.

(*o*) *Harbottle v. Roberts*, (1905) 1 K. B. 572, 573, Collins, M.R.

In the case of inconsistency between prior Acts and rules which have legislative authority, to the extent above stated the rules prevail (*p*). Many enactments have been expurgated from the Statute-book on this ground. But special enactments as to the incidence and amount of costs have in some cases been held not to be repealed by the general provisions of the rules (*q*).

Where an Act passed subsequently to the making of rules is inconsistent with them, the Act must prevail unless it was so clearly passed *alio intuitu* that the two may be allowed to stand together (*r*).

County Court  
Rules.

Similar principles of construction are applied to the County Court Rules, having regard always to the rule that the jurisdiction of the Superior Courts can only be ousted by specific words (*s*). "The answer to this question," said Lord Esher, M.R., "depends upon the construction of sects. 118 and 119 of the County Courts Act, 1888, and the rules governing the scales of costs given in the Appendix to the County Court Rules, 1889. Those rules were made by a committee of County Court judges, and allowed by the Lord Chancellor, under the authority conferred by sect. 164 of the Act, and they have, I assume, a statutory force. We must therefore construe the Act and rules together as one enactment, and we must endeavour to ascertain the meaning of each part of them from a consideration of the whole" (*t*). And at p. 357 he spoke of the rule as having the force of a statute.

Rules made by Courts under statutory or other authority may be quashed as *ultra vires* where they impose conditions not warranted by the statute (*u*).

It must not be forgotten that rules made by a Court under its common law powers cannot override a statute. In *R. v. Parlett* (1873), L. R. 8 Q. B. 491, it appeared that although all the preliminaries required by 9 Geo. 4, c. 61, s. 27 (the Act which gave the right to appeal), had been duly observed, the Court of Quarter Sessions to whom the appeal was made had refused to hear it, on the ground that a certain rule, which they had made with regard to giving notice of appeal, had not been complied with. With regard to the making of rules by Quarter Sessions, although they have no statutory authority to do so, yet, as Blackburn, J., said: "It has been established by numerous cases that it is incident to a

(*p*) *Garnett v. Bradley* (1876), 3 App. Cas. 944, 950.

(*q*) See *Reeve v. Gibson*, (1891) 1 Q. B. 652.

(*r*) See *King v. Charing Cross Bank* (1890), 24 Q. B. D. 27, where the question arose whether the County Courts Act, 1888, s. 127, as to procedure in prohibition, was inconsistent with R. S. C. 1883, Ord. XXIX. rr. 1, 8a. *Vide infra*, Chap. v. p. 313.

(*s*) *Vide ante*, pp. 116, 117.

(*t*) *Re Langlois and Bideu*, (1891) 1 Q. B. 349, 355.

(*u*) *R. v. Bird*, (1898) 2 Q. B. 340, as to rules made by Quarter Sessions under sect. 43 of the Licensing Act, 1872.

Court of Quarter Sessions to regulate its own practice." But as they had in this instance made a rule which was not a mere rule of practice, but one which imposed upon appellants an additional condition to those which were imposed by statute, it was clear that they had acted beyond the scope of their power, and that the rule made by them was illegal, and could not be enforced (*x*).

Rules made by judges, when equivalent to statutes, are to be construed in the same way—*i.e.*, the meaning of the rule must be gathered from the language used. In *Danford v. McAnulty* (1883), 8 App. Cas. 453, 460, Lord O'Hagan said: "We cannot act upon intention either in the case of a statute or in the case of a rule; we must have the intention carried into effect, and if the intention is stated to have been such that the terms either of the rule or of the statute contravene it, or are in any way inconsistent with it, we cannot have regard to that intention; we can only say, either in the case of the judges or in the case of the Legislature, what the judges or the Legislature have actually done. It is manifestly impossible to enter on such an inquiry without confusion and serious risk of defeating the ends of justice. In the case of the judges it may be more easy to find out exactly what they felt and wished than in the case of the Legislature, but, still, the difficulty would be enormous. We cannot act upon intention." Lord O'Hagan went on to say (p. 460) that there was strong testimony as to the purpose for which the rule in question (R. S. C. 1875, Ord. XIX. r. 15, as to pleading in ejectment) was framed, which was put forward as being in a sense a contemporaneous exposition of the rule, and seemed to justify the inference of an agreement of the judges on the point, but that even this agreement would not prevail if opposed to the express terms of the rule. In dealing with a new rule it is, as in the case of a statute, necessary to consider the state of the law at the time, and the object of the change, if any, effected by the rule (*y*).

Interpretation of judge-made rules.

(*x*) *Cf. R. v. Bird*, (1898) 2 Q. B. 340, as to rules made by Quarter Sessions under the Licensing Act, 1872. [In *Brown v. Shaw* (1876), 1 Ex. D. 427, Bramwell, B., said: "I doubt whether under any circumstances the judges have power to enlarge a period of time fixed by a statute for doing an act."] This depends on whether the statute is imperative or directory.

(*y*) *In re a Solicitor* (1890), 25 Q. B. D. 17, 26, Esher, M.R. In *Hills v. Stanford* (1904), 23 N. Z. L. R. 1061, rules had been made under the authority of a statute for regulating practice and procedure, and were to have the same force and effect as if set out in the enacting part of the statute. It was held that the rules and forms might be looked at and considered in interpreting an ambiguous provision in the statute, and that in interpreting the statute the Court might take into account that the practice prescribed by the rules had been followed for a number of years. Stout, C.J. (p. 1066), said: "It is not necessary to hold that a rule made under the authority of that section" (conferring the extenuating power) "which conflicted with the express terms of some section of the Act would be valid. If, however, the rule assumes an interpretation of an unexplained and of a possibly ambiguous phrase, the Court would, in my opinion, hesitate to declare it invalid and made without authority."

Where a question arose on R. S. C. 1883, Ord. L. r. 8, as to the meaning of the words "the amount of money in respect of which the lien or security is claimed," Lord Esher said, in *Gebrüder Naf v. Ploton* (1890), 25 Q. B. D. 13, 15: "They must be construed according to the ordinary meaning of the English language, unless there is something in the context which shows that it ought not to be so construed. The words have no idiomatic meaning, and they must therefore be construed according to their grammatical meaning."

Forms annexed to rules.

Forms prescribed by rules of court are not construed as limiting or derogating from the rules or Act under which they are prescribed. They bear the same relation to rules as schedules do to Acts (z).

Bylaws.

8. The term bylaw, as now generally understood, applies to the local laws or regulations (a) made by public bodies of a municipal kind, or concerned with local government, or by corporations (b), or societies formed for commercial or other purposes, including gas, water, and railway companies, trade unions and friendly, industrial and building societies (c). Certain of these bodies, when constituted by charter (d), have certain common law powers as to making bylaws; but here it is only proposed to deal with those made under statutory authority.

*Ultra vires.*

A bylaw, unlike a statute, may be treated by the Courts as *ultra vires* and unenforceable. That is to say, if a power exists by statute or charter or custom to make bylaws, that power must be exercised strictly in accordance with the provisions of the statute, charter, or usage which confers the power. Thus, in *Brown v. Holyhead Local Board* (1852), 32 L. J. Ex. 25, it appeared that the local board was authorised by 21 & 22 Vict. c. 98, s. 29, to make bylaws with respect, among other things, "to the level, width and construction of new streets." The Board made a bylaw empowering them "to cause any works in new or existing buildings," of which they did not approve, "to be pulled down or otherwise dealt with as the case may require." "We are all of opinion," said Pollock, C.B., "that the bylaw is not valid, as it is not in pursuance of the

(z) *Ante*, p. 204.

(a) There appears to be no essential difference between bylaws made under an Act and rules or regulations made under an Act. In sect. 188 of the Public Health Act, 1875 (38 & 39 Vict. c. 55), "a distinction is drawn between regulations which sanitary authorities may make and bylaws, but the distinction is only made for the purposes of the Act": Lumley on Bylaws, p. 3. In *De Morgan v. Metropolitan Board of Works* (1880), 5 Q. B. D. 155, 158, Lush, J., said that "bylaws are a code of restrictions," i.e., restrictions on the liberty of residents in the locality to which they apply.

(b) See Lumley on Bylaws, p. 164.

(c) See *Re West Riding Permanent Benefit Building Society* (1890), 43 Ch. D. 407; *Tosh v. North British Building Society* (1886), 11 App. Cas. 489.

(d) The bulk of the original legislation of the American Colonies was effected by bylaws passed under the Colonial Charters: see *post*, Bk. II., chap. ix., "Colonial Legislation."

authority." But a bylaw is not held *ultra vires* merely because it interferes with private property, nor because it prohibits where empowered to regulate, as regulation often involves prohibition (e). And a distinction is usually drawn between the prohibition or prevention of a trade by a municipal bylaw and its regulation or governance, and indeed a power to regulate or govern ordinarily would seem to imply the continued existence of that which is regulated or governed, and to be inconsistent with absolute prohibition (f).

There are four main grounds on which the bylaws may be treated as *ultra vires*—

- (a) That they are not made, sanctioned and published in the manner prescribed by the statute which authorises the making.
- (b) That they are repugnant to the laws of England.
- (c) That they are repugnant to the statute under which they are made.
- (d) That they are unreasonable.

(a) Courts do not take judicial notice of bylaws, and require proof that the alleged bylaws have been made, and that all necessary sanctions have been obtained and all steps taken to bring them into operation. The mode of proof of bylaws depends usually upon the terms of the statute under which they are made. The statute which deals with the proof of most classes of bylaws is sect. 1 of the Evidence Act, 1845 (8 & 9 Vict. c. 113). Bylaws made under the Municipal Corporations Act, 1882 (45 & 46 Vict. c. 50), are proved under sect. 124 of that Act, and bylaws made under the Public Health Act are proved under sect. 186 of that Act.

Conformity to prescribed form.

Bylaws are usually revocable without reference to Parliament (g), and the Courts have in most, if not all, cases the right to inquire and determine whether any particular rule, regulation, or bylaw is made in accordance with the statutory powers—whether as to the time when it is made, the form in which it is made, or its substantial contents. It has long been settled that the approval of a bylaw by the authorities mentioned in the statute under which it is made does not give it validity if it is in other respects not in accordance with the statutory power (h). When the prescribed mode has been followed the bylaws are

(e) *Slattery v. Naylor* (1888), 13 App. Cas. 446, 450.

(f) *Municipal Council of Toronto v. Virgo*, (1896) App. Cas. 88; cf. *Scott v. Glasgow Corporation*, (1899) App. Cas. 470.

(g) See *ante*, p. 257.

(h) See *Ipswich Taylors' case* (1614), 11 Co. Rep. 53; *Stationers' Co. v. Salisbury* (1693), Comb. 221, 222; *R. v. Wood* (1855), 5 E. & B. 49; *Kennaird v. Cory & Son*, (1898) 2 Q. B. 578; *Slattery v. Naylor*, *ubi sup.* In New Zealand the Courts deal more freely with municipal bylaws than is now done in England, because in the colony they are not subject to the checks and safeguards imposed by English statute law: see *Grater v. Montague* (1903), 23 N. Z. L. R. 904.

Repugnancy  
to general  
law.

duly made so far as form is concerned ; but it does not follow that their contents are authorised by the statute.

(b) [A bylaw to be valid, says Sir John Comyns (Digest, tit. Bylaw, B. 1), must be *legi fidei rationi consona*. This is in accordance with the proposition stated in 5 Co. Rep. 63 a, namely, that "all bylaws are allowed by the law which are made for the true and due execution of the laws or statutes of the realm, or for the well government and order of the body incorporate. And all bylaws which are contrary or repugnant to the laws or statutes of the realm are void and of no effect" (k).] It is sometimes expressly stated in a statute that a bylaw must not be repugnant to the statute or the general law ; but whether so stated or not [a bylaw which in whole or in part is not confined to the particular circumstances contemplated by the statute or is repugnant to the general law is invalid. From this rule it follows, as was said by Lush, J., in *Hall v. Nixon* (1875), L. R. 10 Q. B. 152, 159, "obedience to a bylaw cannot be enforced by the imprisonment of the offender or by the forfeiture of his goods, because these are both against Magna Charta" (l).] It is necessary, however, to bear in mind the distinction between (1) bylaws made by corporations existing under charter (m), (2) regulations made by courts baron or court leet (n), and (3) bylaws purporting to be made in execution of statutory authority (o), for most of the older decisions relate to bylaws of the first two classes.

In *Edmonds v. Waterman's Company* (1855), 24 L. J. M. C. 128, the Court said that "a bylaw cannot be said to be inconsistent with the laws of this kingdom merely because it forbids the doing of something which might lawfully have been done before, or requires something to be done which there was no previous obligation to do, otherwise a nominal power of making bylaws would be utterly nugatory." And in *White v. Morley*, (1899) 1 Q. B. 34, 39, Channell, J., in speaking of a bylaw of the third class, said : "A bylaw is a local law, and may be supplementary to the general law ; it is not bad because it deals with something that is not dealt with by the general law, but it must not alter the general law by making that lawful which the

(k) It was usual to insert in statutes which give power to make bylaws a proviso that "no bylaw shall be of any effect if repugnant to the laws of England." This is, however, an unnecessary precaution, if the above proposition, as stated by Sir John Comyns, be part of the common law of the land.

(l) Unless the statute giving power to make the bylaw incorporates the Summary Jurisdiction Acts, or otherwise gives power to imprison.

(m) *Fide post*, p. 271.

(n) These are bylaws whose validity depends on the Common Law rules as to the validity of local customs.

(o) See *Smith v. Butler* (1889), 16 Q. B. D. 349, where it was held that a borough corporation could make and enforce a bylaw under sect. 48 of the Tramways Act, 1870 (33 & 34 Vict. c. 78), regulating the number of passengers to be carried on a tramcar, even without the assent of the lessee of the tram line—i.e., although the bylaw might interfere with the profits of the line.

general law makes unlawful, or that unlawful which the general law makes lawful" (p).

[(c) Bylaws made in pursuance of a statutory power must not go beyond, nor be repugnant to, the enactment under which they are made.] In *Rossi v. Edinburgh Corporation*, (1905) A. C. 21, the question was raised whether the civic authority had power to make regulations for the sale of ice cream in the form of a licence purporting to give effect to the Edinburgh Corporation Acts, 1900 (s. 80) and 1901 (s. 57). The statutes made a licence necessary for the sale of ice cream, but the licence issued limited the days and hours of sale. It was held that the licence as drawn was *ultra vires*. Lord Davey said (p. 27): "Every restriction and every regulation such as I find in the Act of 1900, repeated in the Provisional Order of 1901, is of course *pro tanto* a restraint upon the ordinary right of every British subject. It is, in fact, a restraint of trade, and I am of opinion that although the Act and the Provisional Order in which I find such provisions ought to be construed fairly, and ought to be construed so as reasonably to effect the object which the Legislature may be presumed to have had in view, you ought not by implication to extend the restriction in respect of that particular trade further than the Legislature has sanctioned, and still less ought you to give such a construction to clauses of that description as would impose a restraint not only upon the exercise of the particular trade which is in question, but also upon the exercise of other trades which are not in question" (q).

Inconsistency with the statute under which they are made.

In *Sydney Municipal Council v. Austral Freezing Works, Limited*, (1905) A. C. 161, the Judicial Committee declared *ultra vires* a bylaw purporting to authorise charges for cattle intended for slaughter and yarded in private yards and not in yards established or licensed by the municipal authority. The case turned on the wording of the Sydney Corporation Act, 1879 (43 Vict. No. iii).

(d) The power to quash as unreasonable bylaws made by corporations appears to have arisen, or to have been first authoritatively declared, by 15 Hen. 6, c. 6, an Act which expired, but was revived and confirmed in 1503 by 19 Hen. 7, c. 7 (qq). The Act is directed against masters, wardens, and fellowships of crafts or mysteries (*i.e.*, mediæval trades unions), and rulers of guilds and fraternities, described in the preamble as private bodies corporate in cities, towns and boroughs. It has been continuously exercised with reference to all bylaws for many centuries, and the Courts have been active to restrain the

Bylaw must be reasonable.

(p) The decision in this case was approved in *Thomas v. Sutters*, (1900) 1 Ch. 10 (C. A.).

(q) Cf. *Spreadborough v. Walcot* (1904), State Rep. Queensland, 104, where the Court asserted its power to inquire into the validity of bylaws made without statutory authority although they had been confirmed by the proper authority under the statute.

(qq) Unrepealed. See 1 Rev. Stat. (2nd ed.), p. 237.

encroachments alike of the royal prerogative and local option upon the general law of the realm. And the jurisdiction of the High Court to decide upon the reasonableness of bylaws can be ousted only by express enactment <sup>(r)</sup>. But a distinction is now drawn between municipal bylaws and bylaws made by companies which carry on business for their own profit <sup>(s)</sup>.

Local Govern-  
ment bylaws.

Sect. 23 of the Municipal Corporations Act, 1882, empowers the council of a municipal borough from time to time to make such bylaws as to them seem meet for the good rule and government of the borough, and to appoint a penalty not exceeding 5*l.* for prevention and suppression of offences against the bylaws.

Such bylaws can only be made in the presence of at least two-thirds of the council, and do not come into force till forty days after a copy under the common seal has been sent to a Secretary of State. The bylaws may be disallowed wholly or in part by Order in Council made within the forty days or such longer time as is fixed by the King for postponing the operation of the bylaws <sup>(t)</sup>. *Prima facie* but not conclusive proof of the making and confirmation of such bylaws and the satisfaction of all conditions precedent to their being valid and operative may be given by a copy under the corporate seal <sup>(u)</sup>.

This power was extended to county councils by sect. 16 of the Local Government Act, 1888 (51 & 52 Vict. c. 41), as to so much of their administrative county as does not lie within the limits of a borough, and to the councils of metropolitan boroughs by the London Government Act, 1899 (62 & 63 Vict. c. 14).

Bylaws for the purpose of preventing and suppressing nuisances are made subject to sects. 182—187 of the Public Health Act, 1875, which requires their sanction by the Local Government Board and provides that they shall not be repugnant to the laws of England. (Sect. 182.)

The Courts are now averse to quashing bylaws of this kind as unreasonable. The tendency of judicial opinion on this point is well exemplified by two recent decisions. In *Slattery v. Naylor* (1888), 13 App. Cas. 446, which turned on the validity of a bylaw made by a local authority in New South Wales for regulating interments in cemeteries, the Judicial Committee said (p. 453): "The jurisdiction of testing bylaws by their reasonableness was originally applied in such cases as those of manorial bodies <sup>(v)</sup>, towns, or corporations having inherent powers or general powers conferred by charter of making such laws. As new corporations, or other local administrative bodies

<sup>(r)</sup> *Bentham v. Hoyle* (1878), 3 Q. B. D. at p. 292, Cockburn, C.J.

<sup>(s)</sup> *Idem post*, p. 275.

<sup>(t)</sup> *Mantle v. Jordan*, (1897) 1 Q. B. 248.

<sup>(u)</sup> *Robinson v. Gregory*, (1905) 1 K. B. 534.

<sup>(v)</sup> Manorial bylaws rest on custom, and could always be rejected as unreasonable.



have arisen, the same jurisdiction has been exercised over them. But in determining whether or no a bylaw is reasonable, it is material to consider the relation of its framers to the locality affected by it, and the authority by which it is sanctioned. . . . Every precaution has been taken by the Legislature to ensure: (1) That the council shall represent the feelings and interests of the community for which it makes laws. (2) That if it is mistaken, its composition may promptly be altered. (3) That its bylaws shall be under the control of the supreme executive authority. And (4) that ample opportunity shall be given to criticise them in either House of Parliament. Their lordships feel strong reluctance to question the reasonable character of bylaws made under such circumstances, and doubt whether they ought to be set aside as unreasonable by a court of law, unless it be in some very extreme case."

The views above expressed were accepted as to England in *Kruse v. Johnson*, (1898) 2 Q. B. 91 (x), where a question was raised as to the validity of a bylaw regulating street music made by a County Council, assuming to act under sect. 16 of the Local Government Act, 1888. In that case Russell, C.J., said (p. 96): "A bylaw of the class we are here considering I take to be an ordinance affecting the public, or some portion of the public, imposed by some authority clothed with statutory powers, ordering something to be done or not to be done, and accompanied by some sanction or penalty for its non-observance. It necessarily involves restriction of liberty of action by persons who come under its operation as to acts which, but for the bylaw, they would be free to do or not to do as they pleased. Further, it involves this consequence, that if validly made it has the force of law within the sphere of its legitimate operation." He added (p. 99): "When the Court is called upon to consider the bylaws of public representative bodies clothed with the ample authority which I have described, accompanied by the checks and safeguards which I have mentioned, I think the consideration of such bylaws ought to be approached from a different standpoint. They ought to be supported if possible. They ought to be, as has been said, 'benevolently interpreted,' and credit ought to be given to those who have to administer them that they will be reasonably administered." But he said further (p. 99) (y), that there may be "cases in which it would be the duty of the Court to condemn bylaws made under such authority as these were made (by a County Council) as invalid because unreasonable. But unreasonable in what sense? If, for instance, they were found to be partial and unequal in their operation as between different classes; if they were manifestly

(x) In that case most of the earlier authorities are collected; see also *Thomas v. Sutters*, (1900) 1 Ch. 10; 69 L. J. Ch. 27; *Mantle v. Jordan*, (1897) 1 Q. B. 248.

(y) The contrary view was well expressed by Mathew, J., in the same case at p. 107, and his views are supported by many prior decisions.

unjust; if they involved such oppressive or gratuitous interference with the rights of those subject to them as could find no justification in the minds of reasonable men, the Court might well say, 'Parliament never intended to give authority to make such rules; they are unreasonable and *ultra vires*.' But it is in this sense, and in this sense only, as I conceive, that the question of reasonableness or unreasonableness can properly be regarded (z). A bylaw is not unreasonable merely because particular judges may think that it goes farther than is prudent or necessary or convenient, or because it is not accompanied by an exception which some judges may think ought to be there" (a).

The decision in *Kruse v. Johnson* has been explained by Channell, J., in *White v. Morley*, (1899) 1 Q. B. 33, 39, by saying that when a thing is of such a character that it can be a nuisance, it is to rest with the local authority to say whether it shall be considered a nuisance in the particular locality for which they have power to make bylaws. The Court can say whether it is reasonably possible for the prohibited act or thing to be a nuisance, but cannot say whether it should or should not be forbidden in the particular locality. And in *Salt v. Scott Hall*, (1903) 2 K. B. 245, 249, the same learned judge said: "The Court does not now readily interfere to set aside as unreasonable and void bylaws which a local authority has deliberately adopted, for it recognises that the local authority is itself the best judge as to whether a particular bylaw is required in its district or not." When considering whether a bylaw is reasonable or not, the Courts need a strong case to be made out against it, and decline to determine whether it would have been wiser or more prudent to make the bylaw less absolute, nor will they hold that it is unreasonable because considerations which the Court would itself have regarded in framing such a bylaw have been overlooked or rejected by its framers (b).

The result of these decisions is to place bylaws for "good rule and government" made under sect. 23 of the Municipal Corporations Act, 1882, as extended by subsequent enactments to

(z) Sect. 16 of the Local Government Act, 1888, and sect. 23 of the Municipal Corporations Act, 1882; and as to safeguards, sect. 187 of the Public Health Act, 1875.

(a) Russell, C.J., also said (p. 99) that the decided cases show a wide diversity of judicial opinion, and no principle or definite standard of unreasonableness. The view of Cockburn, C.J., in *Bailey v. Williamson* (1872), L. R. 8 Q. B. 118, that if a rule is made within the scope of the authority given the Courts cannot inquire into its reasonableness was not accepted in *Kruse v. Johnson* (see p. 99) as absolutely excluding inquiry into reasonableness. But *Bailey v. Williamson* may perhaps be explained as applying to regulations made under statutes as distinct from what are usually and more accurately described as bylaws.

(b) See *Slattery v. Naylor* (1888), 13 App. Cas. 446, 452. In *Heap v. Burnley Union* (1884), 12 Q. B. D. 617, 618, Coleridge, C.J., said: "It is impossible to attempt to lay down what, under all the circumstances, would be a reasonable bylaw, but it seems to me to be unreasonable to say that in country districts, in the present state of things, nobody shall keep a pig within fifty feet of his dwelling-house."

counties and to metropolitan boroughs, in a somewhat different position from bylaws under most other statutes.

Bylaws made under the Public Health Acts and under Acts as to streets and buildings seem to be now treated as in the same position as bylaws under the Act last cited (*c*), as have bylaws made by Conservators of Fisheries (*d*). But the Courts have not wholly ceased to exercise their power of declaring such bylaws unreasonable.

In *Salt v. Scott Hall*, (1903) 2 K. B. 245, the absence of any discretionary or dispensing power to relax the operation of bylaws in cases to which they technically applied was held no ground for declaring them unreasonable, especially in view of the powers of justices to deal with such a case under sect. 16 of the Summary Jurisdiction Act, 1879. But bylaws by local authorities under the Weights and Measures Act, 1878 (41 & 42 Vict. c. 49), have been quashed as unreasonable (*e*). And in *Nokes v. Islington Corporation*, (1904) 1 K. B. 610, and in *Stiles v. Galinski*, (1904) 1 K. B. 615, bylaws made under sect. 94 of the Public Health (London) Act, 1891, were held to be unreasonable because they contained no provision for giving notice of the requirements of the sanitary authority before proceedings could be taken for breach of the bylaws; and in *Scott v. Pilliner*, (1904) 2 K. B. 855, a county council bylaw was held unreasonable which sought to prohibit the sale or distribution in the streets or public places of papers devoted wholly to giving information as to the result of races, steeplechases, and other competitions. The Court held the bylaw too wide and too uncertain, as reaching cases where the sale, &c. had nothing to do with street betting or nuisance, and was perfectly innocent (*f*).

"The great majority of cases in which the question of bylaws has been discussed are not cases of bylaws of bodies of a public representative character entrusted by Parliament with delegated authority, but are for the most part cases of railway companies, dock companies (*ff*), and other like companies carrying on business for their own profit, although incidentally for the advantage of the public. In this class of case it is right that the Courts should jealously watch the exercise of these powers and guard against their unnecessary or unreasonable exercise to the public disadvantage" (*g*).

Bylaws of  
companies,  
societies, &c.

(ii) There have been numerous decisions with reference to railway bylaws made under the Railway Clauses Act, 1845 (8 & 9 Vict. c. 20), s. 109 whereof enacts that "For better enforcing all or

(*c*) *Simmons v. Malling R. D. C.*, (1897) 2 Q. B. 433.

(*d*) *Clayton v. Pearse*, (1904) 1 K. B. 424, 427.

(*e*) *Ally v. Farrell*, (1896) 1 Q. B. 636; but *cf.* *Kent County Council v. Humphreys*, (1895) 2 Q. B. 903.

(*f*) The most recent collection of bylaws cases is in the Encyclopædia of Local Government Law, vol. 2, tit. "Bylaw."

(*ff*) *Dick v. Badart* (1883), 10 Q. B. D. 387; *Londonderry Harbour Commissioners v. Londonderry Bridge Commissioners* (1894), 2 Ir. Rep. 384.

(*g*) *Kruse v. Johnson*, (1898) 2 Q. B. 91, 99, Russell, C.J.

any of such regulations (under sect. 108), it shall be lawful for the company, subject to the provisions of the Railway Regulation Act, 1840 (3 & 4 Vict. c. 97), to make bylaws, and from time to time to repeal and alter such bylaws and make others, provided that such bylaws be not repugnant to the laws of that part of the United Kingdom where the same are to have effect, or to the provisions of this or the special Act."

[In *Dearden v. Townsend* (1865), L. R. 1 Q. B. 10, it appeared that a railway company were authorised by their Act to make bylaws in order to carry out the provisions of the Act. One of these provisions was that it was an offence for anyone to travel without having paid his fare "with intent to evade payment of it." The company made a bylaw that "any passenger not producing his ticket" when required to do so "will be required to pay the fare from the place whence the train originally started." A passenger, who had intended only to travel from a certain station and back, went farther on owing to accidental circumstances, and not "with intent to evade payment of his fare." The company, however, insisted that under their bylaw the passenger was bound to pay for the whole distance the train had travelled. But it was held otherwise. "The statute," said Cockburn, C.J., "expressly provides for the case of persons intending to evade the payment of their fares, making that fraudulent intention the gist and essential ingredient of the offence. Then sect. 109 authorises the company to make bylaws not repugnant to the provisions of the statute. Therefore, if the company thus alone authorised to make bylaws were by a bylaw to constitute the same facts an offence, striking out the ingredient of intention to defraud, they would be altering the enactment of the statute and legislating in a sense repugnant to its provisions" (*h*).] By the Regulation of Railways Act, 1889 (52 & 53 Vict. c. 57), s. 5, certain difficulties created by the above decision and those cited in the note (*h*), *infra*, were removed, but that statute does not in any way extend the powers of railway companies to frame bylaws imposing penalties with respect to tickets in the absence of any intent to defraud (*i*).

Bylaws made under the Tramways Act, 1870, appear not to be rendered invalid or unreasonable by omission to make intent to defraud (*k*) an ingredient in offences thereby created, or to include the words "so as to be a nuisance or annoyance to others" (*l*).

In the case of societies formed and registered under Acts of Parliament, statutory provisions are usually made for the sub-

Rules of  
friendly, &c.  
societies.

(*h*) See also *Hall v. Nixon* (1875), L. R. 10 Q. B. 161, Quain, J.; *R. v. Lurdie* (1863), 23 L. J. Q. B. 345, Willes, J.; *Bentham v. Hoyle* (1878), 3 Q. B. D. 289; *L. B. & S. C. R. v. Watson* (1878), 3 C. P. D. 429; 4 C. P. D. 118; *Saunders v. S. E. R.* (1880), 5 Q. B. D. 463, Cockburn, C.J.; *Dyson v. L. & N. W. R.* (1881), 7 Q. B. D. 32.

(*i*) *Huffam v. N. Staffordshire Rail. Co.*, (1894) 2 Q. B. 821.

(*k*) *Hanks v. Bridgman*, (1898) 1 Q. B. 253; *Loue v. Volp*, (1896) 1 Q. B. 256.

(*l*) *Gentel v. Rapps*, (1902) 1 K. B. 160.

mission of their rules and bylaws to the registrar of friendly societies, or some other public officer or department, for sanction. Such rules differ from ordinary bylaws in being the basis of the terms of membership of a particular society, and not being a local law. They resemble the articles and regulations of a limited company as to its internal management, and may be treated as *ultra vires* on the same principle (*m*), i.e., their validity or invalidity depends on observance of the statutory directions as to the mode of passing, registering, and obtaining sanction, and on the question whether their contents are in accordance with the powers of internal legislation given by the statute (*n*). But the certificate of the sanctioning officer is not conclusive in favour of the validity of a rule plainly *ultra vires* (*o*).

(e) There is some difference of judicial opinion as to whether a bylaw is severable or divisible. In *Clark v. Denton* (1830), 1 B. & Ad. 92, 95, Bayley, J., said that a bylaw if severable can be good in part and bad in part; and in *Dyson v. L. & N. W. Rail. Co.* (1881), 7 Q. B. D. 32, Lindley and Mathew, JJ., treated the bylaw there in question as severable. In *Saunders v. South-Eastern Rail. Co.* (1880), 5 Q. B. D. 456, 463, Cockburn, C.J., said: "Not only is it essential to the validity of a bylaw that it be reasonable, but also that a bylaw being entire, if it be unreasonable in any particular, shall be void for the whole." But in *Strickland v. Hayes*, (1896) 1 Q. B. 290, 292, Lindley, L.J., said: "There is plenty of authority for saying that if a bylaw can be divided, one part may be rejected as bad while the rest may be held to be good" (*p*). When breach of a bylaw is punishable as an offence, it is difficult to divide the bylaw so as to leave the valid and quash the invalid portion, but there seems no insuperable obstacle to doing so in a proper case.

(*m*) See *Murray v. Scott* (1884), 9 App. Cas. 519; *Re Sunderland 36th Universal Building Society* (1890), 24 Q. B. D. 394; *Sixth West Kent Mutual Building Society v. Shore*, (1899) 2 Ch. 64, n.; *Same v. Hills*, (1899) 2 Ch. 60; *Strohmenger v. Finsbury Permanent Investment Building Society*, (1897) 2 Ch. 469.

(*n*) Such rules may also be illegal if in restraint of trade: see *Swaine v. Wilson* (1890), 24 Q. B. D. 252; *Chamberlain's Wharf, Ltd. v. Smith*, (1900) 2 Ch. 605 (C. A.); *Howden v. Yorkshire Miners' Association*, (1903) 1 K. B. 308.

(*o*) *Laing v. Reed* (1869), 5 Ch. App. 4, 5, Hatherley, L.C.; *Cullerne v. London, &c. Building Society* (1890), 25 Q. B. D. 485 (C. A.).

(*p*) This case has been doubted and distinguished on points not affecting the dictum above quoted: see *Burnett v. Berry*, (1896) 1 Q. B. 641; *Thomas v. Sutters*, (1900) 1 Ch. 10, 14, Lindley, L.J.; *Gentel v. Rapps*, (1902) 1 K. B. 160, 163, Alverstone, C.J.

## CHAPTER IV.

## EFFECT OF STATUTES ON COMMON LAW AND EQUITY.

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Present relations of common law and equity.

1. REFERENCES to the common law in this chapter must be taken as also applying to equity, inasmuch as the fusion of the Courts of law and equity, and the provision that equity is to be administered in preference to law where their rules conflict (a), have in effect constituted a new *lex non scripta*.

A statute may extend the common law to cases which it did not cover, or restrict or exclude its operation as to cases which it did cover, or merge it wholly in the statute law, *e.g.*, by codification.

Case-law and statute law.

It frequently becomes important to decide whether a statute has altered or affected law or equity as declared by the judges (b). Thus, in *Moore v. Knight*, (1891) 1 Ch. 547, Stirling, J., had to determine whether the decision in *Blair v. Bromley* (1848), 2 Ph. 354; 5 Hare, 542, was affected by sect. 8 of the Trustee Act, 1888 (51 & 52 Vict. c. 59), which extended the Statute of Limitations to certain breaches of trust.

(a) Judicature Act, 1873 (36 & 37 Vict. c. 66), s. 25, sub-s. 11.

(b) But see hereon *Bank of England v. Vagliano*, (1891) A. C. 107, 144, Lord Herschell.

In case of conflict case-law must of course yield to statute law. Many enactments are aimed at particular judicial decisions, either declaring them to have been erroneous, or altering the law as laid down in them. And it is a matter of every-day occurrence for the Courts to consider whether the wording of an enactment shows an intent to get rid of some rule of case-law (c). Thus, in *Handley v. Handley*, (1891) P. 124, 127, Lindley, L.J., said: Sect. 35 of the Matrimonial Causes Act, 1859 "enacts that the Court may make such provision as it may deem just and proper with respect to the custody, maintenance, and education of the children the marriage of whose parents is the subject of the suit. The language is express and unmistakable, and clearly gives to the judge of the Divorce Court a wide discretion as to the custody of the children, though not a discretion which cannot be the subject of an appeal. This discretion, in my opinion, overrules both the common law rules and the Chancery rules as to the custody of children which were in force when the Act was passed. The judge is not bound to follow any of these rules, though he will have regard to them in exercising his discretion; but he will be mainly guided by the particular circumstances of the case before him."

Where common law and a statute conflict, the latter prevails.

22 & 23 Vict. c. 61.

"The common law," says Lord Coke (1 Inst. 115 b), "has no controler in any part of it but the High Court of Parliament, and if it be not abrogated or altered by Parliament it remains still." If it is clear that it was the intention of the Legislature, in passing a new statute, to abrogate the previous common law on the subject, the common law must give way and the statute must prevail (d); but there is no presumption that a statute is intended to override the common law, and if, as Coleridge, J., said in *R. v. Scott* (1856), 25 L. J. M. C. 133, there is "a seeming conflict between the common law and the provisions of a statute," it is not right to begin "by assuming at once that there is a real conflict and sacrificing the common law;" we ought rather to proceed in the first place "by carefully examining whether the two may not be reconciled, and full effect given to both." "It is a sound rule," said Byles, J., in *R. v. Morris* (1867), L. R. 1 C. C. R. 90, at p. 95, "to construe a statute in conformity with the common law rather than against it, except where and so far as the statute is plainly intended to alter the course of the common law." Thus, in *Warden of St. Paul's v. Dean of St. Paul's* (1817), 4 Price 65, it appeared that 37 Hen. 8, c. 12, enacted that "the citizens and inhabitants of London should pay tithes yearly." Upon an action being brought against the

(c) *E.g.* the Criminal Evidence Act, 1898 (61 & 62 Vict. c. 36); and see *Burge v. Ashley & Smith, Ltd.*, (1900) 1 Q. B. 744 (C. A.); *Steele v. McKinlay* (1880), 5 App. Cas. 754.

(d) The dictum of Coke that an Act of Parliament cannot overrule the principles of the common law is not now accepted. See Maine, *Hist. Early Inst.* p. 381; Dicey, *Law of Constitution* (6th ed.), 39, 59, n.; and as to colonial laws, 28 & 29 Vict. c. 63, *post*, Part II. ch. ix.

Dean of St. Paul's for non-payment of tithes, it was argued that, being an ecclesiastical person, he was exempt from paying tithes in accordance with the common law maxim, *Ecclesia ecclesie decimas solvere non debet*. It was held, however, that as there was an express Act of Parliament charging every house generally in the parish, except certain houses which are expressly exempted . . . therefore, the Act of Parliament not having expressly discharged him, the Dean was liable . . . because the maxim was contravened by the express words of an Act of Parliament.] As a general proposition of common law the sheriff is entitled to poundage on money obtained by the execution creditor by operation of law, whether by sale of the goods of the judgment debtor, or by being paid out. By sect. 46 of the Bankruptcy Act, 1883 (46 & 47 Vict. c. 52), "the costs of the execution" are made a charge on any property delivered over to the official receiver in bankruptcy under the section. In *Re Ludmore* (1884), 13 Q. B. D. 415, 417, Cave, J., held that the expression "costs of the execution" must be governed and construed by the general rule above stated, and that consequently the sheriff was not entitled to poundage unless he had sold the goods seized or had been paid out before the intervention of the official receiver.

[There is a very lengthy and learned discussion in Coke upon Littleton by Hargrave and Butler, 115 a, note (15), ed. 1832; upon the effect of a statute upon a custom, leading to the conclusion that a statute which is in the affirmative does not take away a custom; but it seems doubtful whether even a statute expressed in negative language can do so if it is merely declaratory of the existing law (e).]

Effect on pre-  
scription or  
custom.

In *New Windsor Corporation v. Taylor*, (1899) App. Cas. 41, 49, Lord Davey said: "I hold it to be an indisputable proposition of law that where an Act of Parliament has, according to its true construction, to use the language of Littleton, J. (f), 'embraced and confirmed' a right which had previously existed by custom or prescription, that right becomes thenceforward a statutory right, and that the lower title by custom or prescription is merged in and extinguished by the higher title derived from the Act of Parliament" (g). This doctrine also applies to a

(e) [As to this see the cases of *Mayor of London v. Gatford* (1677), 2 Mo. 39, and *R. v. Pugh* (1779), 1 Dougl. 188; also *R. v. Chart* (1870), L. R. 1 C. C. R. 237, 240, as to the effect of affirmative words in a statute upon a liability which has immemorially existed. A local custom cannot be set up against a statute; thus, a custom in Southampton that every pound of butter should weigh 18 ounces was held bad, as being contrary to 14 Chas. 2, c. 26; *Noble v. Durell* (1789), 3 T. R. 271. See also *Truscott v. Merchant Taylors' Co.* (1856), 11 Ex. 855, 863.]

(f) In the *Islington Market Bill* (1835), 3 Cl. & F. 513; and see the *Windsor case*, (1898) 1 Q. B. 186 (C. A.); (1899) A. C. 41, 51, Lord Ludlow; *Mayor of Manchester v. Lyons* (1882), 22 Ch. D. 287, 291, n., 301; *Mayor of Manchester v. Feverley* (1876), 22 Ch. D. 294, n.; and *Abergavenny Improvement Commissioners v. Straker* (1889), 42 Ch. D. 83, 89.

(g) On this subject see *Stevens v. Chown*, (1901) 1 Ch. 894, 900, Farwell, J.



franchise or charter created by grant from the Crown. The result of the doctrine is that the repeal of the statute dealing with a right previously existing by custom, charter, prescription, or franchise does not revive the old right as it stood before the repealed statute was passed, unless an intention to do so is clearly indicated. Where the statute which superseded the franchise was of a temporary character, it seems uncertain whether on the lapse of the statute the old right would revive (*h*).

“Where the Legislature directs that a thing shall at all events be done, the doing of which, if not authorised by the Legislature, would give a right of action or suit to persons affected by the act or omission, the right of action is taken away” (*i*); [for if, as the Court said in *Vaughan v. Taff Vale Rail. Co.* (1860), 29 L. J. Ex. 347, “the Legislature sanctions the use of a particular means for a given purpose, that sanction carries with it this consequence, namely, that the use of the means itself for that purpose is not a proceeding for which an action will lie independent of negligence.” And in *R. v. Pease* (1832), 4 B. & Ad. 30, an action was brought against the Stockton and Darlington Railway by a person whose horse, while passing along a public road near the railway, had been frightened by the noise of the locomotive engines. It appeared that the railway had been made in pursuance of powers given to the defendants by an Act of Parliament, but the plaintiff contended that although the Act in question gave the defendants power to use locomotive engines, it did not follow that the common law rights of the public in general were taken away by the Act so as to prevent an action at common law from lying if the power granted by the Act were used so as to create an annoyance. But the Court held that when the Legislature gave to the defendants unqualified authority to use the locomotives, they must be presumed to have known that the railway would be adjacent to the public highway, and that the part of the public which would use the highway would sustain some inconvenience, which inconvenience there was nothing unreasonable in supposing that the Legislature intended the public to sustain for the sake of the greater good to be obtained by other parts of the public from the railway, and consequently that the common law right of action on account of the annoyance was taken away.] Doubts were for some time expressed by judges as to the correctness of this decision (*k*); but its authority is established by the decisions in *L. B. & S. C. Rail. Co. v. Truman* (1885), 11 App. Cas. 45, 50 (*l*), and *Cowper Essex v. Acton L. B.* (1889), 14 App. Cas. 153, the latter being with reference to the effect of

Cases in which common law rights of action are taken away by statute.

(*h*) *New Windsor Corporation v. Taylor*, (1899) A. C. 41, 45, Halsbury, L.C.; but see *Gwynne v. Drewitt*, (1894) 2 Ch. 616.

(*i*) *Metropolitan Asylums Board v. Hill* (1881), 6 App. Cas. 203, Lord Blackburn.

(*k*) In *Powell v. Fall* (1880), 5 Q. B. D. 597, 601, Bramwell, L.J.

(*l*) *Vide ante*, p. 245.

sewage works on an owner of land near, but not physically next to, the lands taken by a local authority under compulsory powers. And the doctrine has been also accepted by the Judicial Committee in numerous decisions (*m*). [It must not, however, be forgotten that where persons are authorised by statute to create what would otherwise amount to an indictable nuisance, they are bound without any express enactment to mitigate the nuisance and diminish the annoyance arising therefrom by every means in their power (*n*).]

The most conspicuous instances of interference by statute with common law rights are the cases where land may be taken compulsorily by statute (Lands Clauses Acts), or where acts which, but for the statute, would be ground for indictment or action, are authorised by the statute, and under it may be done, either without regard to common law rights at all, or subject to compensation to be awarded by special statutory procedure (*o*).

Effect of  
affirmative  
statute on  
common law.

2. Coke says (2 Inst. 200), that "it is a maxime in the common law that a statute made in the affirmative without any negative expressed or implied doth not take away the common law." But it is doubtful whether this statement can be described as a maxim or considered as more than a very feeble presumption. In *Mayor of London v. R.* (1848), 13 Q. B. 33, note (*d*), Alderson, B., said in the course of the argument: "The words 'negative' and 'affirmative' statutes mean nothing. The question is whether they are repugnant or not to that [common law] which before existed. That may be more easily shown when the statute is negative than when it is affirmative, but the question is the same." And the true rule for interpreting statutes which may affect the rules of common law and equity, and legal and equitable remedies (whatever be the form of the statute), is to consider whether the statutory provision is repugnant to the former substantive or adjective law, or whether it merely operates to strengthen the former law by giving more effectual remedies, whether exclusive or alternative. This subject has already been discussed (*ante*, p. 206 *et seq.*) with reference to remedies for breaches of statutes, and it is sufficient to refer to that chapter, and in particular to the observation of Willes, J., in *Wolverhampton New W. W. Co. v. Haugesford* (*p*), printed *ante*, p. 212. In *Stevens v. Chown*, (1901) 1 Ch. 894, the point in dispute was as to the effect of the Sidmouth Market Act, 1839 (2 & 3 Vict. c. lxxx.), upon the common law. Farwell, J., held that the statute simply re-enacted the old

(*m*) *Municipality of Raleigh v. Williams*, (1893) A. C. 540; *Canadian Pacific Rail. Co. v. Parke*, (1899) A. C. 535; *vide ante*, p. 246.

(*n*) *Vide ante*, p. 245.

(*o*) *Vide ante*, p. 245.

(*p*) (1859), 28 L. J. C. P. 242, 246; 6 C. B. N. S. 336; and *cf. Stevens v. Chown*, (1901) 1 Ch. 894.

common law right to the market referred to in the preamble, and applied it to a new market building as and when substituted under the powers of the Act for the old market. He held, therefore, that the case came within class (1), and that the rights of property in the market could be protected not merely by the particular remedy.

(a) The provision by a statute of a particular remedy for the infringement of a right of property thereby enacted or recognised as re-enacted does not oust the jurisdiction of the High Court to protect the right by equitable remedies such as injunction unless express provision is made excluding such remedy. And this rule, it would seem, applies even where the particular remedy bars a common law right of action.

New remedy given by statute for infringing common law right does not oust common law remedy.

The remedies enforceable in the Court of Chancery now vested in the High Court are wider than the old common law remedies, and there is nothing (except the express provisions or necessary implication of a statute) to prevent the Court from granting an injunction to prevent the infringement of a newly created statutory right of such a character that the Court would on its original jurisdiction take cognizance of it (g).

[In *Dr. Foster's case* (1615), 11 Co. Rep. 64, it was held that "in a writ of mesne the process at common law was distress infinite, and although the Statute of West. 2 (13 Edw. 1, c. 9) gives more speedy process, and in the end forejudger, yet the plaintiff may take which process he will, either at the common law or upon the said statute" (3 & 4 Vict. c. xxvi. s. 1). And where a private Act, after reciting that "it would be convenient that persons having demands against the said company should be entitled to sue the secretary," enacted that "all actions to be commenced against the said company shall and lawfully may be commenced against the secretary," it was held in *Blewitt v. Gordon* (1842), 1 Dowl. Pr. C. N. S. 815, that the enactment did not make it imperative to sue the secretary of the company, and that the common law right of bringing an action against any member of the company was not thereby taken away.]

In *Great Northern Fishing Co. v. Edgehill* (1883), 11 Q. B. D. 225, the question arose whether the Employers and Workmen Act, 1875 (38 & 39 Vict. c. 90), s. 4, gave any remedy against a seaman for breach of his contract in the face of the provisions of the Merchant Shipping Act, 1854 (17 & 18 Vict. c. 104), s. 243 (r). Field, J., said: "The duty under consideration in this case is an ordinary obligation to perform an ordinary contract of service, to the breach of which has been annexed the general remedy by action in favour of the employer ever since the contract of service itself. In order, therefore, to hold that

(g) *Stevens v. Chown*, (1901) 1 Ch. 894, 901, Farwell, J., and authorities there referred to.

(r) Repealed and re-enacted as sect. 225 of the Merchant Shipping Act, 1894 (57 & 58 Vict. c. 60).

the employer is deprived of that remedy, the mere annexation of a new specific remedy would not be enough of itself; it must also appear from the statute to have been the intention of the Legislature that the general remedy should not co-exist, otherwise the new remedy will be merely cumulative and in aid of the general one" (s).

Unless the remedies are inconsistent.

[But if, as Lord Cranworth said in *O'Flaherty v. M'Dowell* (1857), 6 H. L. C. 142, at p. 158, it appears "that the statutory right could not, without very great inconvenience, co-exist with the ordinary common law right, and so must have been intended as a substitutional, not an additional, remedy," the common law remedy will be held to have been taken away. Thus, in *Steward v. Greaves* (1842), 10 M. & W. 711, the question was whether the new statutory remedy given by 7 Geo. 4, c. 46, s. 9, that "all actions against a copartnership shall and lawfully may be commenced against one or more of the public officers nominated as before mentioned," annulled the common law right of suing an individual member of a company established under that Act. "The liability created by the statute," said the Court, "is very different from that which would exist without it, and it cannot be supposed that the Legislature meant to leave it to the option of any creditor whether the members of the company should be subject to one species of liability or the other. . . . The framers of the Act had in view the convenience of the public, and thereby provided a remedy more convenient to creditors than that at common law."]

New statutory penalty for offence previously punishable at common law is personally cumulative.

(b) [If a new penalty is imposed by a statute for an offence which was previously punishable at common law (t), the statutory penalty is usually treated as cumulative (u), and not as taking away the former penalty at common law. "It is a clear and established principle," said Ashhurst, J., in *R. v. Harris* (1791), 4 T. R. 202, 205, "that when a new offence is created by an Act of Parliament, and a penalty is annexed to it by a separate and substantive clause, it is not necessary for the prosecutor to sue for the penalty, but he may proceed on the prior clause on the ground of its being a misdemeanour" (x).

(s) He cited *Mayor, &c. of Lichfield v. Simpson* (1845), 8 Q. B. 65.

(t) [Where a statute inflicts a penalty for some offence which was before the passing of the statute punishable in the spiritual Courts, the jurisdiction of the spiritual Court is taken away by the statute if the penalty is inflicted directly *eo nomine* for punishment of the same offence as the ecclesiastical censure: *Cory v. Pepper* (1679), 2 Lev. 222. But if the ecclesiastical censure and the temporal penalty are *diverso intuitu*, the jurisdiction of the Ecclesiastical Court is not taken away: *Middleton v. Crofts* (1736), 2 Atk. 650.]

(u) It is more accurate to call it alternative, for at common law no person may be twice punished for the same offence: *R. v. Miles* (1890), 24 Q. B. D. 423, 431; and see Int. Act, 1889, s. 33.

(x) *Vide ante*, pp. 207, 208; and see *West v. Downman* (1880), 14 Ch. D. 111, 120, Brett, L.J.; *Cooper v. Whittingham* (1880), 15 Ch. D. 501, Jessel, M.R.

Thus, in *R. v. Robinson* (1759), 2 Burr. 800, 804, the defendant was indicted at common law for refusing to obey an order of quarter sessions made upon him to keep and maintain his grandchildren. It was objected on his behalf that, since the Poor Relief Act, 1601, s. 11, prescribed a particular penalty for this offence, the offence was no longer indictable at common law. But this objection did not prevail, for "although the rule is certain that where a statute creates a new offence by prohibiting something that was lawful before, and appoints a specific remedy against such new offence by a particular method of proceeding, that particular method of proceeding must be pursued and no other, yet nevertheless if an offence was antecedently punishable at common law, and a statute is passed which prescribes a particular remedy by a summary proceeding, either method of proceeding may be pursued, because there the method of proceeding is cumulative, and does not exclude the common law punishment" (y).]

In the absence of a special and exclusive statutory remedy, common law and equitable remedies apply to enforce statutory rights or liabilities (z). This rule is well stated by Lord Eldon in *Weal v. West Middlesex Waterworks* (1820), 1 Jac. & Walk. 358, 371: "Where an Act of Parliament as this [46 Geo. 3, c. 11] directs things to be done, or to be forborne to be done, the Legislature either provides the means for compelling such acts to be done, or restraints to prevent these being done which are to be forborne to be done, or if the Act contains no provision of either kind, the Legislature acts upon the supposition that the enactments are complete so far as they go, and that the laws of the Courts of common law and equity are sufficient to enforce the rights which the King's subjects have under the Act. But if it turns out that the Courts of law can give nothing but damages and that the Courts of equity cannot interfere to compel a specific performance . . . it is a defect which, whether it proceeded from a mistake of the Legislature, or, if I may say so, from its negligent inattention, no Court can supply." The Legislature has not said that the Courts can legislate, but that the Act is to be carried into execution by the known rules of law and equity; and the Courts are bound to try to find out, if possible, from the enactments or from the said rules, the means of enforcing the intention of the Legislature. In *Booth v. Traill* (1883), 12 Q. B. D. 8, an application was made to attach as a debt money which had accrued due to a retired police constable under 11 & 12 Vict. c. 14. In opposition it was contended that the money was not a debt, and could not therefore be attached. Coleridge, C.J., said (p. 11): "It appears to me to be none the less a debt because no particular mode of enforcing the pay-

In absence of specific statutory remedy, common law remedies available to enforce statutes.

(y) *Vide ante*, p. 279.

(z) *Vide ante*, p. 210 *et seq.*

ment is given by the statute. When there is a statutory obligation to pay money, and no other remedy is expressly given, there would be a remedy by action."

Common law incidents attach to certain statutory offences.

(c) [If a statute creates a new variety of something which previously existed at common law (for instance, if a new kind of felony is created by statute), all common law incidents will attach to that new variety. "It is a general rule," says Hawkins (Pleas of the Crown, Bk. II. p. 444), "that where a statute makes an offence felony, it gives it the like incidents that belong to a felony by the common law." And again, in Bk. I. p. 107, he says that it "is incidentally implied in every statute making an offence felony, that every such statute does by necessary consequence subject the offender to the like attainder and forfeiture, &c., and also does require the like construction to all intents and purposes as is incident to a felony at common law." In *The Coalheavers' case* (1768), 1 Leach, C. C. (2nd ed.) 61, it was held that a "newly created felony necessarily possessed all the incidents which appertain to felony by the rules and principles of the common law," and therefore that persons aiding and abetting in the commission of a felony created by statute were equally guilty as principals. On this ground it was held in *Gray v. R.* (1844), 11 Cl. & F. 427, that the common law right of peremptory challenge of jurors attached where the prisoner was tried for a felony punishable under 7 Will. 4 & 1 Vict. c. 85. "It is submitted," said Mr. Napier, the prisoner's counsel, "that a right to a peremptory challenge is incident to a felony of every kind, whether at common law or by statute, for that the simple creation of a felony by statute gives it all the incidents which attend an existing felony" (a). In *Levinger v. R.* (1870), L. R. 3 P. C. 282, it appeared that by sect. 37 of the Victoria Juries Statute, 1865 (No. 272), the common law right of peremptorily challenging twenty jurymen in a criminal trial was extended, with a limitation, to the colony, and by sect. 38 of the same statute provision was made for allowing a mixed jury in the case of an alien, and the question then arose whether the right of peremptory challenge extended to the case of a mixed jury. It was held by the Judicial Committee that it did so extend, on the ground that the common law relating to juries, in the absence of any positive statutory enactment to the contrary, was not affected by the statute of 1865 (as that statute merely prescribed the composition of a mixed jury), and was applicable to the denizen as well as to the alien portion of a jury. "The statute," said the Court, "being in the affirmative, leaves the common law as to this unaffected . . . so that the right of peremptory challenge is not in any way prejudiced." [In *Riche v. Ashbury Carriage Co.* (1874), L. R. 9 Ex. 263, it

Corporations created by statute.

(a) See Archb. Cr. Pl. (23rd ed.) 198, 199.

was held by several judges that a corporation created by statute possessed all the attributes of a corporation at common law, unless any of those attributes were expressly taken away by the statute which created it. In *Ashbury Carriage Co. v. Riche* (1875), L. R. 7 H. L. 653, 685, Lord Hatherley enunciated this proposition as follows: "When once," said he, "you have given being to such a body as this, you must be taken to have given to it all the consequences of its being called into existence, unless by express negative words in the statute you have restricted the operation of the acts of the being you have so created."]

But these *dicta* are probably too widely stated. The difference between a statutory corporation and a corporation incorporated by royal charter is well settled: the former can do such acts only as are authorised directly or indirectly by the statute creating it; the latter, speaking generally, can do everything that an ordinary individual can do. But few corporations in modern times have all the freedom of the common law. Municipal corporations, though chartered, are subject to the restrictions imposed by the Municipal Corporations Act, 1882, even as to their borough fund (*b*), and modern commercial corporations are rarely chartered, and come into being either by special Act (*c*) or under the Companies Acts.

(*b*) See *Att.-Gen. v. Manchester Corporation*, (1906) 1 Ch. 643, 651, Farwell, J.

(*c*) *Stagg v. Medway Upper Navigation Co.*, (1903) 1 Ch. 169 (C. A.), where the question was as to the power to secure authorised loans by mortgage.

## CHAPTER V.

## EFFECT ON PRIOR ENACTMENTS.

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General rule. 1. PARLIAMENT, in the exercise of its supreme legislative capacity, can extend, modify, vary, or repeal Acts passed in the same or previous sessions (*a*). It is, consequently, a matter of daily business for the Courts to consider the exact effect of later upon earlier enactments, in order to see whether they can wholly or in part stand together. The rule of law on the subject is thus stated by North, J., in *Re Williams* (1887), 36 Ch. D. 573, 578: "The provisions of an earlier Act may be revoked or abrogated in particular cases by a subsequent Act, either from the express language used being addressed to the particular point, or from implication or inference from the language used." The particular rules of construction applicable for the enforcement of this rule are stated in the rest of this chapter, mainly with reference to repeal, as modification of prior enactments is in substance either a partial repeal, or imposing some condition or fetter upon the operation of the earlier law (*b*).

(*a*) *Vide post*, p. 289.

(*b*) As to enabling Acts, *see ante*, p. 228 *et seq.*



2. To ascertain whether a public general statute of England (*c*), Great Britain, or the United Kingdom is expressly repealed it is best to refer to the chronological table to the statutes annually published under official authority (*d*). At the end of each annual volume of the statutes published by authority will also be found a table (*iii.*) showing the effect of the year's legislation on former statutes. The chronological table does not take notice of the repeal of preambles or of certain minor abbreviations of former statutes effected by Statute Law Revision Acts (*e*); but these excisions can be ascertained by reference to the text of the statutes printed in the second revised edition of the statutes or to the Revision Acts themselves. With reference to the subject of express repeal, statutes fall into two classes—those passed before and those passed since 1793. Acts prior to that year, unless a contrary intention appeared, all came into force as of the first day of the session in which they were passed (*f*). But since that date they presumably come into force on the day when they receive the royal assent (*g*). It was therefore deemed needful to insert in all Acts a section empowering the amendment, alteration, or repeal of any enactment in the session in which it was passed. This provision was probably superfluous (*h*), inasmuch as Parliament is not fettered by any restrictions in its supreme legislative authority such as are imposed upon the legislatures of the United States, *e.g.* as to passing *ex post facto* laws (*i*). And it appears to be a constitutional necessity as well as an established rule of construction that the last utterances of the Legislature should prevail over prior statutes inconsistent with it (*k*); but the clause above mentioned was usually inserted until 1850, when it was inserted in Brougham's Act (13 & 14 Vict. c. 21, s. 1). It is now incorporated in the Interpretation Act, 1889, s. 10.

It is now usual to annex a repeal schedule to all Acts which considerably alter the statute law, by which means many doubts

Express  
repeals.

Methods of  
express  
repeal.

(*c*) As to repeals of Scots Acts, see Statute Law Revision (Scotland) Act, 1906 (6 Edw. 7, c. 38); as to repeals of statutes of Irish Parliaments, see *ante*, p. 46.

(*d*) It is to be noted that this table only gives the statute which finally repealed a former statute or set of enactments, and that occasionally enactments are repealed twice over, either *per incuriam* or in order to complete *uno ictu* a repeal previously made piecemeal of all or some of the enactments intended to be swept away. In other words, the table shows the latest action of the Legislature in repealing a former enactment, and it is not necessarily to be inferred that no part of the enactment had been repealed before the time indicated by the repealing enactment mentioned in the table.

(*e*) See 61 & 62 Vict. c. 22, s. 1.

(*f*) *Vide ante*, p. 50.

(*g*) 33 Geo. 3, c. 13. *Vide post*, p. 319.

(*h*) Sect. 18 of the Customs and Inland Revenue Act, 1889 (52 & 53 Vict. c. 7), was repealed by sect. 15 of the Revenue Act, 1889 (52 & 53 Vict. c. 42), in consequence of the decision of the Court of Appeal in *Inland Revenue Commissioners v. Angus* (1889), 23 Q. B. D. 579.

(*i*) See the Act of 1886 (49 & 50 Vict. c. 11) to provide for assessing compensation for the Piccadilly riots.

(*k*) *Re Derbyshire and Staffordshire County Councils* (1890), 54 J. P. 566, Cave, J.

as to the inconsistency of enactments are settled by Parliament (*l*). In some cases a provision is inserted to the effect that "all provisions inconsistent with the Act are repealed," by which lawyers are simply put on inquiry as to inconsistency, or left to wait till, by a Statute Law Revision Act, the virtually repealed enactments are expurgated; for an Act repealing all enactments inconsistent with itself really goes no further than the general law.

Usually the sole questions arising upon express repeal are the extent of the terms employed, and the qualifications, if any, stated or implied in the repealing enactment. The former question is dealt with in the chapter on "Mistake" (*infra*, Part II. ch. viii.).

To constitute express repeal there must be not only reference to the prior Act, but also the use of words apt to effect its repeal. Thus, in a Canadian case the reference contained in a subsequent Act to a prior Act as being effete was held insufficient as not amounting to legislation (*m*).

Difficulties sometimes arise as to the extent of a repeal owing to the mode of reference to the earlier enactment (*n*). But these are removed as to Acts passed after 1889 by sect. 35 (3) of the Interpretation Act, 1889, which provides that "a description or citation of a portion of another Act shall, unless the contrary intention appears, be construed as including the word 'section' or other part mentioned as forming the beginning and as forming the end of the portion comprised in the citation" (*o*).

Implied  
savings.

Certain savings are implied by law even in express repeals. In Acts passed after 1889 certain savings are implied by statute in all cases of express repeal, unless a contrary intention appears in the repealing Act. They are as follows (*p*):—

The mere repeal does not—

"Revive anything (*q*) not in force or existing at the time when the repeal takes effect; or

(*l*) *Garnett v. Bradley* (1878), 3 App. Cas. 944, 965, Lord Blackburn. Mr. Greaves pointed out in 1861, as to the Statute-book, as he knew it, that "there are many instances in which even direct repeals which refer to the enactment intended to be repealed are so worded that it is impossible to ascertain how much of the old statutes are repealed. Here there must be actual legislation to fix what is and what is not repealed." A second class of repeals is one that has been adopted of late years. It is the repealing in express terms every enactment inconsistent with the Act in which the repeal is found, without referring to any Act at all; so that doubt is thrown on every previous enactment, and it must be compared with the whole and every part of the repealing Act to ascertain whether it is repealed or not. Such repealing clauses are nearly as bad as implied repeals, which abound in the Statute-book, and are the most difficult of all to ascertain: Greaves, *Criminal Law Consolidation Acts* (2nd ed.), Intr. p. xvii. See 56 & 57 Vict. c. 61, s. 2.

(*m*) *Scottish American Investment Co. v. Elora* (1881), 6 Upp. Can. App. 637.

(*n*) *Vide ante*, p. 202.

(*o*) This was a common form which for some time previously had been inserted in the schedule to Acts containing many repeals.

(*p*) Int. Act, 1889, s. 38 (2). See *Roberts v. Potts*, (1893) 2 Q. B. 33; (1894) 1 Q. B. 213. As to the difficulties created for draftsmen by this section, see Thring, *Practical Legislation* (ed. 1902), p. 99.

(*q*) This includes a statute, law, or right. It certainly requires very clear

“Affect the previous operation of any enactment so repealed, or anything duly done or suffered under any enactment so repealed (*r*) ; or

“Affect any right, privilege, obligation, or liability acquired, accrued, or incurred under any enactment so repealed (*s*) ; or

“Affect any penalty, forfeiture, or punishment incurred in respect of any offence committed against any enactment so repealed ; or

“Affect any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture, or punishment as aforesaid ; and any such investigation, legal proceeding, or remedy may be instituted, continued, or enforced, and any such penalty, forfeiture, or punishment may be imposed as if the repealing Act had not been passed.”

It had been usual for some years to insert provisions to the effect above stated in all Acts by which express repeals were effected. The result of this new enactment is to make a general rule out of what had been a common statutory form, and to substitute a general statutory presumption as to the effect of an express repeal for the canons of construction hitherto adopted.

In some cases an amending Act has been held, by necessary implication, to continue certain essential provisions in a repealed Act. In *Wigram v. Fryer* (1887), 36 Ch. D. 87, a local Act incorporating the Lands Clauses Acts was subsequently amended by an Act repealing sect. 33 of the prior Act, which contained provisions as to selling or letting. But North, J., held that the repealing Act by implication continued, for the execution of the purposes of the amending Act, the powers given by sect. 33.

40 & 41 Vict.  
c. cccxxv.  
45 & 46 Vict.  
c. cccxxii.

Where an Act confirming jurisdiction is repealed by a later Act containing a saving clause to the effect that the repeal shall not affect any jurisdiction created by the repealed Act, that jurisdiction, in the absence of inconsistency between the two Acts, should be treated as continuing notwithstanding the repeal. Qualified  
repeals.

The rule is thus stated by Collins, M.R., in *In re B.*, (1906) 1 Ch. 730, which turned on the question whether sect. 5 of the Trustee Act, 1850, which applied to property held by a criminal lunatic, was wholly repealed by sect. 342 of the Lunacy Act, 1890, which does not deal directly with criminal lunatics. He said (p. 736) : “There were one or two other cases cited which have an important application to the present case, that is to say, cases where you find in an Act a repealing clause followed by a

53 & 54 Vict.  
c. 5.

and unmistakable language in a subsequent Act of Parliament to revive or recreate an enforced right : *Lauri v. Renad*, (1892) 3 Ch. 402, 420, Lindley, L.J. ; and *cf. Gwynne v. Drewitt*, (1894) 2 Ch. 616.

(*r*) For an application of this saving, see *Heston and Isleworth Urban District Council v. Groult*, (1897) 3 Ch. 306, 313, Lindley, L.J.

(*s*) As to the meaning of “right accrued,” see *Abbot v. Minister of Lands*, (1895) A. C. 425 ; *Reynolds v. Att.-Gen. for Nova Scotia*, (1896) A. C. 240.

saving clause. There you have to see how far the two enactments can co-exist. It seems to me that the principle laid down in those cases is applicable to the present case. And that principle is this: Where you have a repeal and you have also a saving clause, you have to consider whether the substituted enactment contains anything incompatible with the previously existing enactment. The question is, Aye or No, is there incompatibility between the two? And in those cases the judges, in holding that there was a saving clause large enough to annul the repeal, said you must see whether the true effect was to substitute something incompatible with the enactment in the Act repealed; and that, if you found something in the repealing Act incompatible with the general enactments in the repealed Act, then you must treat the jurisdiction under the repealed Act as *pro tanto* wiped out. That is settled by the cases of *In re Busfield* (t) and *Hume v. Somerton* (u). In both those cases the judges relied upon the incompatibility of the substituted enactments with the old enactments, and held that in consequence of that incompatibility the jurisdiction under the old Act could not remain; but they were prepared to hold that the saving clause would, if there were no incompatibility between the enactments, have the effect of annulling the repeal (x).

"In this state of the authorities it appears to me that there is enough here to enable us to hold that under this saving clause the useful jurisdiction under the Act of 1850 in the case of criminal lunatics have not been absolutely wiped out. It would be a public misfortune if there were no jurisdiction over funds held by criminal lunatics, and, in my opinion, we are not bound to hold that in consequence of the Act of 1890 no such jurisdiction now exists. On the contrary it seems to me to have been the intention of this saving clause to preserve that jurisdiction. Accordingly, I am of opinion that the jurisdiction under the old Act remains, though the practice must be governed by the new Act."

Repeals do  
not revive  
dead law.

Where an Act passed after 1850 contains a clause repealing a repealing enactment, this does not revive any enactment previously repealed, unless words are added reviving the last-mentioned enactment (y). This provision supersedes the canon

(t) (1886), 32 Ch. D. 123. In this case it was held that as the Rules of the Supreme Court, 1883, amounted to a code on the subject in dispute, it would be wrong to hold that a saving clause in the above form preserved a further jurisdiction established by the repealed Act.

(u) (1890), 25 Q. B. D. 239.

(x) The observations of Baggallay, L.J., in *Sayers v. Collyer* (1884), 28 Ch. D. 103, 107, were considered and criticised. In that case the question arose whether the Statute Law Revision Act, 1883 (46 & 47 Vict. c. 49), had taken away the jurisdiction as to damages given to Chancery judges by Lord Cairns' Act.

(y) Int. Act, 1889, s. 11 (1). Sect. 21 of the New Zealand Interpretation Act of 1888, which is framed on the Act of 1850, has been held only to create a presumption against revival where the context does not manifestly indicate a contrary intention. *Lothian v. Bugden* (1904), 23 N. Z. L. R. 901, 903, Williams, J. See also *ante*, p. 281.

of construction previously adopted, and alters the presumption as to the intention to revive a defunct law. Where an Act altering the common law is repealed by an Act passed after 1889, repeal of the statute seems not to revive the common law unless a contrary intention appears (z).

The general rule as to the way in which repealing sections are to be regarded by the Courts is well expressed in *Hough v. Windus* (1884), 12 Q. B. D. 224. In that case a question arose as to the effect of the Bankruptcy Act, 1883 (46 & 47 Vict. c. 52), upon the Statute of Westminster the Second (13 Edw. 1, c. 18) and writs of *elegit*. Bowen, L.J., said (p. 227): "It appears to me that the answer to this somewhat formidable argument [upon sects. 146 and 169 of the Act of 1883] is to be found in a study of the framework of the Bankruptcy Act, 1883, so far as it works a repeal of previous legislation. It does not seem to me to be possible, without misunderstanding the scheme of drafting which the Legislature has adopted, to treat the repealing section (169) as an independent section, or one intended to do more than, for sake of symmetry, to repeal expressly in a group those portions of previous statutes which had already been repealed by implication in the body of the Act. I have examined schedule 5 in detail, which contains the list of previous Acts of Parliament all or part of which is to be repealed by sect. 169, and I have come to the conclusion that the idea upon which the Bankruptcy Act, 1883, has been framed was to enact, in the first place specifically, a complete code of provisions which, so far as they are inconsistent with any previous legislation, would repeal it by implication, and then over again, at the very last, to clear the Statute-book, so to speak, by sect. 169, and to sweep into one compendious repeal section all the statutes and sections of statutes which in the earlier part of the Act had been impliedly done away with already, the Bankruptcy Act, 1869, being itself among the number."

3. The first proposals for the revision of the statute law were made by Edward VI., James I., and Lord Bacon (a), but the process of statute law revision did not begin till 1856, with the repeal in that year of a series of obsolete Acts (b). Since the establishment of the Statute Law Committee in 1868, Statute Law Revision Acts are of almost yearly recurrence. They have been applied to the Acts of the Irish, but not as yet to those of the Scottish Parliament (c). It has already been pointed out (d) that, theoretically, no English Act grows obsolete. The result of this doctrine was that, in the absence of

Statute Law  
Revision Acts.

(z) Int. Act, 1889, s. 38 (2), Appendix C.

(a) *Vide* Ruffhead, Statutes, vol. i. Pref. p. xx.

(b) *Vide* Law Journal Newspaper, vol. xxiii. (1888), p. 413; Ilbert, *Legislative Methods and Forms*, p. 57.

(c) Hitherto they have been left to grow obsolete: see *ante*, p. 5, *post*, p. 335, n. See now the Statute Law Revision (Scotland) Act, 1906 (6 Edw. 7, c. 38).

(d) *Ante*, p. 5.

an authoritative expurgation of the Statute-book, there was always some danger of being brought within the four corners of some forgotten Act or the alternative of a lengthy and puzzling inquiry into the exact amount of inconsistency between older and newer Acts.

Mr. R. S. Wright (*e*) pointed out in 1878 (*f*) that many Acts are retained in the Statutes Revised (and this is so even in the second edition) which, although unrepealed as regards England, are yet for all practical purposes obsolete. And his view was in 1890 indorsed by a select committee of the House of Commons (*g*) on the first Statute Law Revision Bill of that year: "Your committee have been struck, in the course of their examination of the Statute-book, by the large number of statutes of little or no practical utility which still remain unrepealed. This remark applies with special force to Imperial Acts now operative in Scotland or Ireland only, as well as to many Acts of the Parliament of Ireland before the Union. Modern repealing Acts have frequently been expressed to apply to England only where we find no reason to think that, in point of fact, the Act or part of an Act repealed for England has any practical application at the present day to the circumstances of Scotland or Ireland, as the case may be." This expression of opinion has resulted in increased and emboldened activity in the expurgation of dead law. The principles upon which the selection of enactments for inclusion is made are thus stated in the memoranda prefixed to the Bills when introduced:—"The first schedule is intended to comprise (as the preamble to the Bill states), besides superfluous words of enactment, enactments which have *ceased to be in force* otherwise than by express specific repeal, or have by lapse of time or otherwise become *unnecessary*.

Method.

"I. For the purposes of the first schedule, six different classes of enactments are considered as having *ceased to be in force*, although not expressly and specifically repealed; namely, such enactments as are—

"1. *Expired*—that is, enactments which, having been originally limited to endure only for a specified period by a distinct provision, have not been either perpetuated or kept in force by continuance, or which have merely had for their object the continuance of previous temporary enactments for periods now gone by effluxion of time;

"2. *Spent* (*h*)—that is, enactments spent or exhausted in

(*e*) The late Mr. Justice Wright.

(*f*) Report relating to Criminal Law and Procedure, 1878 (H. L.), No. 178.

(*g*) Parl. Rep. 1890—C—110, p. iii.

(*h*) As to the use of the term "spent," see 1 Bl. Comm. (14th ed.), p. 44; Second Report of the late Statute Law Commissioners, p. 7; and *Warren v. Windle* (1893), 3 East, 205; and *post*, p. 347, as to the difference between a law expired and a law spent: Callis on Sewers, 95.

operation by the accomplishment of the purposes for which they were passed, either at the moment of their first taking effect or on the happening of some event or on the doing of some act authorised or required ;

- “ 3. *Repealed in general terms*—that is, repealed by the operation of an enactment expressed only in general terms as distinguished from an enactment specifying the Acts on which it is to operate ;
- “ 4. *Virtually repealed*—where an earlier enactment is inconsistent with, or is rendered nugatory by, a later one ;
- “ 5. *Superseded*—where a later enactment effects the same purposes as an earlier one by repetition of its terms or otherwise ;
- “ 6. *Obsolete*—where the state of things contemplated by the enactment has ceased to exist, or the enactment is of such a nature as to be no longer capable of being put in force, regard being had to the alteration of political or social circumstances.

“ II. For the purpose of the schedules, enactments are considered *unnecessary* where the provisions are of such a nature as not to require at the present day statutory authority.

“ Where any enactment is comprised in the schedules on any ground not above explained, the ground of repeal sufficiently appears from the expression used in the third column of the schedule to the Bill, which is, however, not matter for consideration by the Courts ” (i).

The saving clauses in Statute Law Revision Acts are drawn with great care. Saving clauses.

(1) They usually confine the effect of the repeal to the United Kingdom, leaving it open to colonial legislatures to deal with Acts operating as part of the colonial law (k).

(2) They also contain (in addition to the savings referred to *ante*, p. 290) the following savings :—

- (a) Enactments not comprised in the schedule (*i.e.*, Acts incorporated with enactments repealed) are unaffected by the inclusion in the schedule of Acts by which the excluded Acts have been repealed (l), confirmed, revived, or perpetuated. Temporary Acts subsequently made perpetual are dealt with by excision of the clause as to duration and the Act making them perpetual, thus destroying their history to some extent.
- (b) Enactments in which a repealed enactment has been applied, incorporated, or referred to, are unaffected by its repeal (m).

(i) *Vide ante*, p. 124.

(k) *Vide infra*, ch. viii. ; 28 & 29 Vict. c. 63 ; *post*, ch. ix.

(l) This is covered by the Int. Act, s. 38 (2).

(m) *Vide* Int. Act, s. 38 (1).

Effect.

The effect of Statute Law Revision Acts is, in the main, literary only. They excise dead matter, prune off superfluities, and reject clearly inconsistent enactments. Farther than this they do not profess to go (*n*). And it is rare for any serious error to be made in any of them. In one or two cases the wrong Act has been repealed by a misprint (*o*), and in one or two other cases it has been thought advisable to re-enact or revive an enactment included in the Statute Law Revision Acts (*p*).

By the Statute Law Revision Act, 1890 (53 & 54 Vict. c. 33), earlier Acts have been abbreviated by excision of words made unnecessary by the Interpretation Act, 1889. And the Statute Law Revision Act, 1893 (56 & 57 Vict. c. 3), authorised the revisers, in preparing the second revised edition of the statutes, to substitute references by a statutory short title for references to the full title.

In dealing with Acts prior to the seventeenth century, the effect of Statute Law Revision Acts appears to be, not to alter the law, but to leave outstanding as common law what has by long establishment become hardly distinguishable from it. And it must not be hastily assumed that an Act or a clause is repealed because it is specified in the schedule to a Statute Law Revision Act. In *Northam Bridge Co. v. R.* (1886), 55 L. T. 759, an Act repealed, among many others, by the old General Turnpike Act was found to be so far revived by an obscurely framed exception in a later Act as to exempt the Postmaster-General from payment of toll for use of a bridge made under special statutory authority, and as to preclude what might have been an interesting argument on the question of exemption by prerogative (*q*).

Repeal of preambles.

The repeal or omission of preambles effected by recent Statute Law Revision Acts (*r*) is intended to carry out the recommendations of a select committee of the House of

(*n*) See *Huffam v. North Staff. Rail. Co.*, (1894) 2 Q. B. 821.

(*o*) *Vide* the Statute Law Revision Act, 1888 (51 & 52 Vict. c. 57), and 60 & 61 Vict. c. 24, s. 7.

(*p*) *E.g.* 10 Geo. 4, c. 44, s. 9.

(*q*) Sir F. Pollock, 3 L. Q. R. 114. See also *Gas Light and Coke Co. v. Hardy* (1886), 17 Q. B. D. 619.

(*r*) Ruffhead and the Statute Law Revision Committee differ as to the value of a preamble. Ruffhead says (Statt. at Large, 1769, vol. i. Pref. p. xxii.): "By having the statute at large before him, he has the benefit of the preamble, which, as Lord Coke observes, is a good guide to discover the meaning of the Act, or rather, a key which opens to the knowledge of it; and it is a rule of the law that the Preamble must be taken for Truth. The preamble generally sets forth the mischief intended to be remedied, and by having the chain of Acts under his eye the reader may perceive how the remedy operated and how it was counteracted, by which means he will be better able to judge of the full end and scope of the Legislature with respect to the subject of his inquiry." The omission of the preambles in the Revised Statutes detracts from their value to lawyers, who, if an Act is obscure, can never feel safe without recourse to the full text, which is, for purposes of construction, as fully in force as if the Statute Law Revision Act had not touched its contents, for the Statute Law Revision Acts from 1890 do not repeal, but merely authorise the omission in whole or part of certain preambles: Ilbert, *Legislative Methods and Forms*, 72.



Commons (s) which in 1890 came to the conclusion that the process of (statute law) revision might be safely made much more extensive and valuable by the repeal of such of the preambles of scheduled Acts as are not required for the purpose of explaining or interpreting the Acts to which they are prefixed, and were not of any such historical interest as to make it desirable that they should be reprinted in future and revised editions of the statutes. This procedure undoubtedly saves a good deal of printing, but is open to somewhat serious objections.

- (1) It is difficult for a draftsman to decide offhand what light the Courts would derive from a preamble in construing a statute ;
- (2) The omission makes it necessary for Courts and lawyers, out of caution, to use, not the revised statute, but the full text, when a question of construction arises ; and
- (3) The opinion of a Parliamentary committee on the effect of a preamble cannot be taken into account in the construction of a statute.

It seems to be safe to deal with preambles in this way only when the sections to which the repealed part clearly refers are also repealed, or where the Courts have definitely decided on the relation of the preamble to the enacting part.

4. The effect of incorporating one Act with another is presumably to make them parts of the same code (t). Incorporated  
Acts.

Where an Act is to be construed as one with a prior Act, *prima facie* the later Act is not of wider application than the earlier Act. Thus, it was held in *Cox v. Andrews* (1883), 12 Q. B. D. 126, that the Betting Act, 1874 (37 & 38 Vict. c. 15), was confined to bets mentioned in the Betting Act, 1853 (16 & 17 Vict. c. 119)—*i.e.* to bets and wagers made in a house, office, room, or other place kept for the purpose of betting. The Parliamentary Oaths Act, 1866 (29 & 30 Vict. c. 19), prescribed a form of oath, and a penalty for not taking it. The Promissory Oaths Act, 1868 (31 & 32 Vict. c. 72), altered the form of oath and re-enacted the Act of 1866. The Statute Law Revision Act, 1875 (38 & 39 Vict. c. 66), repealed the Act of 1866 so far as related to the form of oath. In *Clarke v. Bradlaugh* (1881), 8 Q. B. D. 63, the extent of this repeal came into question, and Brett, L.J. (at p. 69), described the last Act as an Act of supererogation, and said that the contention laid before the Court, that the penalty of the Act of 1866 was taken away by the Act of 1875, obtained its colour only from the form in which the amendments had been made in 1868 ; and added (at p. 69) : “ There is a rule of construction that where a statute is incorporated by reference into a second statute, the repeal of

(s) Parl. Rep. 1890—C—110, p. iii.

(t) *Vide ante*, p. 202. As to difficulties caused by incorporating parts of the same Act with two different sets of prior statutes, see *R. v. Otto Monsted, Ltd.*, (1906) 2 K. B. 456.

the first statute by a third does not affect the second." This rule is now included in the Interpretation Act, 1889, s. 38 (1), with a further provision that, in the case of consolidation Acts, the unrepealed enactment is to be read as referring to the provision in the repealing Act corresponding wholly or with modifications to the enactment to which reference was originally made.

Explanatory  
Acts.

5. Where an Act is expressed to be enacted for the explanation of a prior enactment, *prima facie* it is confined to the same subject-matter as the prior enactment. 1 Will. & Mar. c. 30, was passed to encourage mining for the baser metals therein mentioned. 5 & 6 Will. & Mar. c. 6, was enacted for the better explanation of the earlier Act. And in *Att.-Gen. v. Morgan*, (1891) 1 Ch. 432, it was held that the latter enactment did not apply to mines worked for gold, although the rock in which the gold was found contained the baser metals mentioned in the earlier Act.

Consolidation  
Acts.

6. Consolidation is the reduction into a systematic form of the whole of the statute law relating to a given subject, as illustrated or explained by judicial decisions (*u*).

Numerous consolidation Acts have been passed by Parliament (*x*) in the last thirty years, beginning with the Criminal Law Consolidation Acts of 1861, and since 1868 (*y*) the process has gone on with growing rapidity (*z*) *pari passu* with revision.

The effect of most of these Acts may be described as purely literary. In so far as the Act is purely a consolidation Act, although it may repeal the reproduced enactments, the repeal is merely for the purpose of rearrangement, and there is no moment at which the substance of the older enactments ceases to be in force (*a*), although it is true that its ancient form is

(*u*) Encyc. English Law (1st ed.), vol. iii. p. 387, Ilbert. Thring, "Practical Legislation" (ed. 1902), p. 14.

(*x*) Much more progress has been made in the consolidation of the statute law of the colonies than in that of the United Kingdom. In Canada the statutes of the Dominion and of many of the provinces have been revised and consolidated either in the form of a code (Québec, 1888; Dominion, 1886; Ontario, 1897; Manitoba, 1891; British Columbia, 1897), or on the plan of Chitty's Statutes (Nova Scotia, 1900). The chief titles were consolidated in Victoria in 1890, and in Tasmania in 1903. The Queensland statutes are collected in the form of Chitty's Statutes, and in many of the Crown Colonies similar revision and consolidation has been effected. In India, many branches of the law have been codified. See Ilbert, *Legislative Methods and Forms*, ch. ix.

(*y*) When there was no Statute Law Revision Committee. See Thring, *Practical Legislation* (ed. 1902), p. 16; Ilbert, *Legislative Methods and Forms*, p. 65. In 1892, a joint committee of both Houses repealed, in 1893, the work of the committee. (Parl. Pap. 1893, c. 22; and Ilbert, *loc. cit.* p. 72.)

(*z*) *E.g.* the Customs Laws Consolidation Act, 1876; the Sheriffs Act, 1887; the Coroners Act, 1887; the Stamp Act, 1891; the Stamp Duties Management Act, 1891; the Municipal Corporations Act, 1882; the County Courts Act, 1888.

(*a*) The revision of the statutes of Canada, brought into force by Royal Proclamation in March, 1887, though in form repealing the Acts consolidated, has been held in reality to preserve them in unbroken continuity; and as a consequence of this rule it was held that the adoption by municipalities of the

destroyed by the process of reproduction and repeal. The consolidation merely places together in a later volume of the Statute - book enactments previously scattered over many volumes (*b*). But it must not be forgotten that it is almost inevitable that in the process of consolidation the rearrangement of the former Acts and the modernisation of the language should to some extent alter the law. And often a consolidation Act is not a statute merely collecting into one chapter an original or principal Act with subsequent amendments and codifications, but involves the co-ordination and simplification of former enactments (*c*).

The consequences which flow from these facts may be briefly stated thus :—

(1) The Courts will lean against any presumption that such an Act was intended to alter the common law. In *Nolan v. Clifford* (1904), 1 Australia C. L. R. 429, 445, speaking of the Crimes Act, 1900 (No. 40), of New South Wales, Griffith, C.J., said : “ This is described to be an Act to consolidate the statutes relating to criminal law. There is nothing to indicate that the Legislature intended to make any substantial alteration in the law. It is intituled an Act to consolidate the statutes. There is nothing to suggest that they intended to make an important alteration in the common law on a matter materially affecting the liberty of the subject.” And Barton, J., at p. 452, in concurring, added : “ By the construction we are now placing on it (sect. 9 of the Act), the ordinary purpose of a consolidating Act is preserved, and it will not be wrested from its declared objects and applied to others, by which process an amendment would be placed in a statute where the public and the profession would not be in the least degree on their guard to look out for it” (*d*).

(2) Decisions on the older enactments are usually accepted as conclusive (*e*) in the construction of the substituted section in the later Act, even, it would seem, although the words would, if used for the first time in the substituted section of the later Act, presumably bear another sense (*f*). And the duty of every

Canada Temperance Act prior to the revision was not changed or interfered with by the revision, the alterations in the phraseology of the revising Act being verbal only, and not materially changing its character: *Frontenac Licence Commissioners v. Frontenac County* (1887), 14 Ont. Rep. 741, Boyd, C.

(*b*) Of this the Coroners and Sheriffs Acts of 1887 and the Merchant Shipping Act, 1894, are notable instances.

(*c*) *Williams v. Permanent Trustee Co. of N. S. W.*, (1906) A. C. 248, 253.

(*d*) And see *ante*, p. 279.

(*e*) *Ide ante*, p. 161. See also *Clarkson v. Musgrave* (1881), 9 Q. B. D. 386; approved in *Smith v. Baker*, (1891) A. C. 325, 349; and as to the Ontario statutes, *Nicholls v. Cumming* (1877), 1 Canada S. C. 395, 420, Richards, C.J., 425, Strong, J.; *Crain v. Ottawa Collegiate Institute* (1878), 43 U. C. Q. B. 498, 501, Harrison, C.J. The Consolidated Statutes of the Dominion of Canada are read as one great Act: *Boston v. Lelièvre* (1870), L. R. 3 P. C. 157, 162.

(*f*) This rule, it is submitted, should not be applied where the superseded Act has received different constructions, *e.g.* in different provinces of Canada, or different parts of the United Kingdom: see *Davidson v. Ross* (1876), 24 U. C. Ch. 22, 79, Patteson, J.

50 & 51 Vict.  
c. 55, s. 8.

man to be ready and appalled to follow the sheriff and take felons at the cry of the county would, it is submitted, be read by the construction, if any, put on it in past times. This rule may also be equally well expressed by saying that the repealed enactments are to be dealt with as being *in pari materia* with the corresponding section of the later Act. It is recognised in the Interpretation Act, 1889, s. 38 (1), by the provision that, unless a contrary intention appears, when an Act passed after 1889 repeals and reproduces, with or without modification, any provisions of a former Act, references in any other Act to the provisions thus repealed are to be read as references to the provisions thus re-enacted. In *Re Budgett*, (1894) 2 Ch. 557, Chitty, J., had to construe sect. 40 of the Bankruptcy Act, 1883, and said: "I have here to deal not with an Act of Parliament codifying the law, but with an Act to amend and consolidate the law, and therefore it is, I say, these observations (g) do not apply; and I think it is legitimate in the interpretation of the sections in this amending and consolidating Act to refer to the previous state of the law for the purpose of ascertaining the intention of the Legislature." And he then proceeded to examine the course of decisions and legislation with respect to the distribution of joint and separate estates from *Ex parte Cook* (h). And in *Brown v. McLachlan* (1872), L. R. 4 P. C. 543, 550, the Judicial Committee had to interpret a South Australian statute, which professed to repeal a former statute of limited operation, and to re-enact its provisions in an amended form. In order to ascertain the intention of the Legislature, they examined the history of the land legislation of the colony, to see whether there was anything therein to rebut the presumption that it had not been meant in a statute of the kind to extend the amended provisions to classes of persons not within the repealed Act. But the Court has no authority to take a consolidating Act to pieces and rearrange the sections so as to produce an effect which on the face of the Act as it stands does not seem to have been intended (i).

46 & 47 Vict.  
c. 52.

(3) Statutes not expressly repealed continue in force without modification, except so far as stated in the provision last set forth.

Codification  
Acts.

7. Acts codifying the law, so far as they embody statute law, are subject to the same rules as consolidation Acts. So far as they embody the rules of equity, common law, or the law merchant, they must be construed with reference to the rules laid down in the last chapter, subject to the observations of Lord Herschell in *Bank of England v. Vagliano* (k), which turned upon the Bills of Exchange Act, 1882 (45 & 46 Vict.

(g) *I.e.* the observations of Lord Herschell in *Vagliano's case*, *infra*.

(h) (1728), 2 P. Wms. 500.

(i) *Williams v. Permanent Trustee Co. of N. S. W.*, (1906) A. C. 248, 253.

(k) (1891) A. C. 107.

c. 61), the first modern Act which can be said to have the qualities of a code. The learned Lord, in discussing the opinions of the Court of Appeal, said (at p. 144): "The conclusion thus expressed was founded upon an examination of the state of the law at the time the Bills of Exchange Act was passed. The prior authorities were subjected by the learned judges who concurred in this conclusion to an elaborate review, with the result that it was established to their satisfaction that a bill made payable to a fictitious person or his order was, as against the acceptor, in effect a bill payable to bearer only when the acceptor was aware of the circumstance that the payee was a fictitious person, and, further, that his liability in that case depended upon an application of the law of estoppel. It appeared to those learned judges that if the exception was to be further extended it would rest upon no principle, and that they might well pause before holding that sect. 7, sub-sect. 3, of the statute was 'intended, not merely to codify the existing law, but to alter it, and to introduce so remarkable and unintelligible a change.' With sincere respect for the learned judges who have taken this view, I cannot bring myself to think that this is the proper way to deal with such a statute as the Bills of Exchange Act, which was intended to be a code of the law relating to negotiable instruments. I think the proper course is, in the first instance, to examine the language of the statute, and to ask what is its natural meaning, uninfluenced by any considerations derived from the previous state of the law, and not to start with inquiring how the law previously stood, and then, assuming that it was probably intended to leave it unaltered, to see if the words of the enactment will bear an interpretation in conformity with this view. If a statute intended to embody in a code a particular branch of the law is to be treated in this fashion, it appears to me that its utility will be almost entirely destroyed, and the very object with which it was enacted will be frustrated. The purpose of such a statute surely was that on any point specifically dealt with by it, the law should be ascertained by interpreting the language used, instead of, as before, by roaming over a vast number of authorities in order to discover what the law was, extracting it by a minute critical examination of the prior decisions, dependent upon a knowledge of the exact effect even of an obsolete proceeding such as a demurrer to evidence. I am, of course, far from asserting that recourse may never be had to the previous state of the law for the purpose of aiding in the construction of the provisions of the code. If, for example, a provision be of doubtful import, such resort would be perfectly legitimate. Or, again, if in a code of the law of negotiable instruments words be found which have previously acquired a technical meaning, or been used in a sense other than their ordinary one, in relation to such instruments, the same in-

terpretation might well be put upon them in the code. I give these as examples merely. They, of course, do not exhaust the category. What, however, I am venturing to insist upon is, that the first step taken should be to interpret the language of the statute, and that an appeal to earlier decisions can only be justified on some special ground. One further remark I have to make before I proceed to consider the language of the statute. The Bills of Exchange Act was certainly not intended to be merely a code of the existing law. It is not open to question that it was intended to alter, and did alter, it in certain respects. And I do not think that it is to be presumed that any particular provision was intended to be a statement of the existing law, rather than a substituted enactment." This opinion has been accepted as applicable to codifying Acts such as those relating to bills of exchange (*l*), partnership, and the sale of goods, and to Indian and colonial (*m*) codes; but it does not apply to consolidation Acts (*n*).

In *Norendra Nath Sircar v. Kamalbasini Dasi* (1896), 23 Ind. App. 18, a case on the meaning of the Indian Succession Act (X. of 1865), Lord Macnaghten, in discussing the proper mode of interpreting a code, after quoting the passage already cited from *Vagliano's case* said (p. 26): "The learned judges of the High Court have taken the case which was approved by the House of Lords. The subordinate judge followed exactly the opposite course. His judgment, with much display of learning and research, is a good example of the practice which Lord Herschell condemns, and the mischief which the Indian Succession Act, 1865, was intended to prevent. . . . To construe one will by reference to expressions of more or less doubtful import to be found in other wills is, for the most part, an unprofitable exercise. . . . The Indian Legislature may have thought it better in certain cases to exclude all controversy by positive enactment. At any rate, in regard to contingent or executory bequests the Indian Succession Act, 1865, has laid down a hard and fast rule which must be applied wherever it is applicable without speculating on the intention of the testator."

Implied  
repeal.

8. Where two Acts are inconsistent or repugnant, the later will be read as having impliedly repealed the earlier (*o*). It

(*l*) *Ex parte Bank of Brazil*, (1893) 2 Ch. 438, 442, Chitty, J.

(*m*) *Robinson v. Canadian Pacific Rail. Co.*, (1892) A. C. 481.

(*n*) *Vide ante*, p. 298.

(*o*) *Paine v. Slater* (1883), 11 Q. B. D. 120. In the U. S., as here, repeals by implication are not readily presumed or inferred: *Columbia v. Hutton* (1891), 143 U. S. 26, Lamar, J. In *U. S. v. Tynen* (1870), 11 Wallace U. S. 88, 92, it was held that when there are two Acts on the same subject, the rule is to give effect to both if possible. But if the two are repugnant in any of their provisions, the later Act, even without any repealing clause, operates to the extent of the repugnancy as a repeal of the first; and even when the two Acts are not in express terms repugnant, yet if the later Act covers the whole subject of the first, and embraces new provisions plainly showing that it was intended as a substitute for the first Act, it will operate as a repeal of that Act.

does not matter whether the earlier or the later enactment is public, local and personal, or private (*p*); and the rule is equally applicable to rules of Court if they have statutory force and are made under authority empowering the rule-makers to supersede prior enactments as to procedure (*q*). The Court must be satisfied that the two enactments are so inconsistent or repugnant that they cannot stand together before they can, from the language of the later, imply the repeal of an express prior enactment—*i.e.*, the repeal must, if not express, flow from necessary implication (*r*). Thus in *The Dart*, (1893) P. 33, the Court of Appeal held that sect. 45 of the Judicature Act, 1873, as to appeals from County Courts was repealed by sect. 10 of the County Courts Act, 1875, which came into operation on the day after the Act of 1873, and that the subsequent repeal of the 1875 Act by the County Courts Act, 1888, s. 188, did not revive the repealed provisions of the Act of 1873. But where the terms of a later enactment, taken in their primary meaning, are wide enough to abrogate a prior enactment, they will be read as repealing it, unless some contrary intention is clearly manifested to cut down or restrict such primary meaning.

36 & 37 Vict.  
c. 66.

51 & 52 Vict.  
c. 43.

To determine whether a later statute repeals by implication an earlier, it is necessary to scrutinise the terms and consider the true meaning and effect of the earlier Act. Until this is done, it is impossible to ascertain whether any inconsistency exists between the two enactments. 32 Hen. 8, c. 9, s. 2 (*s*), imposed a penalty on the sale of pretended titles. 8 & 9 Vict. c. 106, s. 6, permitted the sale of rights of entry. The Court of Appeal held in *Jenkins v. Jones* (1882), 9 Q. B. D. 128, that until 8 & 9 Vict. c. 106, s. 6, a right of entry fell within the meaning of a pretended title in the earlier Act, and that the effect of the subsequent Act was, not to repeal the earlier, but to restrict its application—a distinction which might have been better expressed by saying that the earlier enactment was repealed in part.

In *Douglas v. Simpson*, (1905) 1 Ch. 279, it was held that the

(*p*) *Vide post*, pp. 309, 314; and *Re West Devon Consols Mining Co.* (1888), 38 Ch. D. 51.

(*q*) See *ante*, p. 265. Thus the County Courts (Admiralty Jurisdiction) Act, 1868 (31 & 32 Vict. c. 71), s. 9, was held to have been impliedly repealed by R. S. C. Ord. LIV. r. 1: *Rockett v. Clippindale*, (1891) 2 Q. B. 293. And in *The Delano*, (1895) P. 40 (C. A.), it was held that sects. 26, 31, of the same Act, were impliedly repealed in part as to appeals by sect. 120 of the County Courts Act, 1888. But in *The T. . . .* (1895) P. 142, it was held that an exception in sect. 10 of the Act of . . . the general terms of sect. 101 of the Act of 1888; and see *The Theodora*, (1897) P. 279, 284.

(*r*) *Thames Conservators v. Hall* (1868), L. R. 3 C. P. 415, Byles and Keating, JJ.; *Kutner v. Phillips*, (1891) 2 Q. B. 267, 271, Smith, J.; *West Ham Churchwardens v. Fourth City Mutual Building Society*, (1892) 2 Q. B. 655, 658, Smith, J.; and as to U. S., *Petri v. Creelman Lumber Co.* (1905), 199 U. S. 487, 497, White, J., where the question raised was as to the effect of a subsequent Act in general terms on a prior Act of a special character relating to a particular class of cases.

(*s*) Sect. 2 is now repealed *in toto* by the Land Transfer Act, 1897 (60 & 61 Vict. c. 65), s. 11.

- 54 & 55 Vict.  
c. 73. general provisions contained in sect. 7 of the Mortmain, &c. Act, 1891, impliedly repealed the restrictions on the amount to be given to churches imposed by 43 Geo. 3, c. 108. In *Re Smith's Estate* (1887), 35 Ch. D. 589, Stirling, J., held that the same Act was not affected by the Married Women's Property Act, 1882.
- 45 & 46 Vict.  
c. 75. 9. [Where a new Act is couched in general affirmative language, and the previous law can well stand with it, and if the language used in the later Act is all in the affirmative, there is nothing to say that the previous law shall be repealed, and therefore the old and the new laws may stand together. The rule as to repeal of a statute by a subsequent inconsistent statute is equally applicable to bylaws (†). There the general affirmative words of the new law would not of themselves repeal the old (u). As Lord Clare said in *Haydon v. Carroll* (1796), 3 Ridg. Parl. Cas. 545, "the two statutes will be considered as forming two distinct codes, and certainly may stand together" (x). This rule was fully discussed in *Dr. Foster's case* (1614), 11 Co. Rep. 61. In that case a *qui tam* action was brought against Dr. Foster under 23 Eliz. c. 1, ss. 5, 11, for not attending divine service. To this Dr. Foster pleaded that the Act sued on was virtually repealed either by 29 Eliz. c. 6, or, if not by that, at any rate by 35 Eliz. c. 1. These two later statutes gave further and additional penalties for non-attendance at church, to be recovered by indictment, without expressly taking away the *qui tam* action. As to this plea the Court said, first, that the later Act was passed, as its title explained, for the purpose of giving more speedy remedy to the Crown; consequently the purpose of the Act was not to oust the former statute, but to oust delay. Secondly, that the later Act was all in the affirmative, and therefore would not repeal or abrogate a previous affirmative law; "forasmuch as Acts of Parliament are established with such gravity, wisdom, and universal consent of the whole realm for the advancement of the commonwealth, they ought not, by any constrained construction out of the general and ambiguous words of a subsequent Act, to be abrogated: *Sed hujusmodi statuta tantâ solemnitate et prudentiâ edita* (as Fortescue said, cap. 18, fol. 21) ought to be maintained and supported with a benign and favourable construction." (Cf. Co. Litt. 115 a.)]
- Effect of  
affirmative  
enactments.

But where affirmative words in a later Act are, as was said in *Stradling v. Morgan* (1560), Plowd. 199, such as necessarily import a contradiction—that is to say, where it is clear that it must have been intended that the earlier and later enactments

(†) See *Gosling v. Green*, (1893) 1 Q. B. 109, 112, Pollock, B.

(u) Lord Blackburn in *Garnett v. Bradley* (1878), 3 App. Cas. 944, at p. 965, where are collected and discussed the chief cases on this subject. Generally statutes in the affirmative do not repeal a precedent affirmative statute: *Dr. Foster's case* (1614), 11 Co. Rep. 61. But if the later is contrary to the earlier statute, it amounts to a repeal of the earlier: Lord Raymond, 160.

(x) Approved in *O'Flaherty v. M'Dowell* (1857), 6 H. L. C. 149, 162.



should be in conflict—the two cannot stand together, and the second repeals the first (*y*). And in construing affirmative words, as was said by Grove, J. in *Ryhope Colliery Co. v. Foyer* (1880), 7 Q. B. D. 485, 492, “it is difficult to say what canon of construction should be applied to the phrase, when included in the later Act, ‘as far as these words are consistent with.’ Such words are easily written, but whether they conduce to clearness and the facility of administering justice may perhaps be open to argument.”

[Even where a statute is expressed in negative language, it may be affirmative with regard to some preceding statute which is also expressed in negative language, if both the statutes have been expressed in negative language for the purpose of limiting the operation of some third statute which is prior to them both. Thus, in *Ex parte Warrington* (1853), 22 L. J. Bank. 33, it appeared that by 3 & 4 Will. 4, c. 98, s. 7, it was enacted that “no bill of exchange not having more than three months to run shall be void by reason of any statute in force for the prevention of usury.” By a subsequent Act, 2 & 3 Vict. c. 37, s. 1, it was enacted that “no bill of exchange not having more than twelve months to run shall be void by reason of any statute in force for the prevention of usury.” As to these two statutes, Turner, L.J., said (at p. 39): “It was argued that the statute [of William] was repealed, or, as it is termed in some of the cases, ‘absorbed,’ by the statute of Victoria, and it is true that the latter statute, extending to all bills payable within twelve months, includes within its provisions the bills payable within three months which are mentioned in the former statute; but it does not, in my opinion, follow that the former statute is repealed or absorbed by the latter. . . . These statutes, though expressed in the negative, are so expressed only on account of the proviso in the statute of [13] Anne [c. 15, against usury]. They are in the negative as to that statute, but *inter se* they are affirmative statutes, and I take the rule of law to be that an affirmative statute is not, without express words, repealed by a subsequent affirmative statute unless the two statutes cannot stand together.”]

A negative statute may be affirmative with regard to another negative statute.

It was laid down by Lord Esher, M.R., in *R. v. Judge of Esser County Court* (1887), 18 Q. B. D. 704, as an ordinary rule of construction, that “where the Legislature has passed a new statute giving a new remedy, that remedy alone can be followed.” But the phrase “new” as applied to a statute is either needless or ambiguous. The old distinction between *vetera* and *nova statuta* (*z*) is obsolete; and “new” is insensible unless applied to statutes creating rights or remedies unknown to the common law or to previous enactments. And for modern use the rule could perhaps be more accurately laid down thus:

New statutory remedies, when exclusive.

(*y*) *Garnett v. Bradley* (1878), 3 App. Cas. 944, 965, Lord Blackburn.

(*z*) *Ante*, p. 54.

In the case of an Act which creates a new jurisdiction, a new procedure, new forms, or new remedies, the procedure, forms, or remedies there prescribed, and no others, must be followed until altered by subsequent legislation (*a*).

52 & 53 Vict.  
c. 63.

With this must be contrasted the rule embodied in many statutes, and now made general by the Interpretation Act, 1889, s. 33, and applied to all statutes, whether general, local, or personal, whether public or private (sect. 39), that when an act or omission constitutes an offence under two or more Acts, or both under an Act and at common law, whether such Act was passed before or after the 1st of January, 1890, the offender shall, unless the contrary intention appears, be liable to be prosecuted and punished under either or any of those Acts or at common law, but shall not be liable to be punished twice for the same offence (*b*).

This enactment makes a penalty imposed by any statute presumably alternative, but not, as it is sometimes described, cumulative, inasmuch as the offender cannot be made to suffer the penalties imposed by common law and the statute, and would be entitled to plead *autrefois acquit* or *convict* if tried at separate times under the common law and the statute, or under the two statutes.

The intention of the section was, by laying down a general rule, to avoid the necessity of inserting a particular provision, to take effect in each new statute dealing with offences. But its effect is rather to relieve the draftsman than the interpreter of the statute, for the judge will still in each case have to consider the whole statute in search of any appearance of the contrary intention.

Many statutes contain clauses similar in effect to the general rule, but without the confusing words as to contrary intention. These statutes, of which, so far as possible, a list is given below, seem not to be affected by the above rule, save so far as it enables the revisers of the Statute-book to dispense with the particular clauses (*c*).

New statu-  
tory penal-  
ties, when  
alternative.

[In accordance with this rule, penalties imposed by statute for offences which were already punishable under a prior statute are regarded as cumulative, and not as repealing the penalty to which the offender was previously liable. "Subsequent Acts of Parliament," said Lord Hardwicke in *Middleton v. Crofts* (1736), 2 Atk. 650, 674, "in the affirmative, giving new penalties and instituting new modes of proceeding, do not repeal former

(*a*) *R. v. Judge of Essex County Court* (1887), 18 Q. B. D. 704, 708, Lopes, L.J.

(*b*) *Vide ante*, pp. 208, 284; *post*, p. 442.

(*c*) 11 Geo. 2, c. 22, s. 4; 18 Geo. 2, c. 30, ss. 2, 3; 30 Geo. 3, c. 7, s. 6; 30 Geo. 3, c. 9, s. 3; 36 Geo. 3, c. 9, s. 6; 37 Geo. 3, c. 70, s. 3; *ib.* c. 123, s. 7; 52 Geo. 3, c. 104, s. 8; *ib.* c. 156, s. 4; 57 Geo. 3, c. 6, s. 5; 60 Geo. 3 & 1 Geo. 4, c. 1, s. 4; 32 & 33 Vict. c. 62, s. 23; 52 & 53 Vict. c. 52, s. 9; *ib.* c. 69, s. 3.

methods and penalties ordained by preceding Acts without negative words." "If, however," as Lord Campbell said in *Mitchell v. Brown* (1859), 28 L. J. M. C. 55, "a later statute again describes an offence which had been previously created by a former statute, and affixes a different punishment to it, and varies the procedure, or if the later enactment expressly altered the quality of the offence, as by making it a misdemeanour instead of a felony, or a felony instead of a misdemeanour, the later enactment must be taken as operating by way of substitution, and not cumulatively." "If," said Lord Abinger in *Henderson v. Sherborne* (1837), 2 M. & W. 236, 239, "a crime be created by statute with a given penalty, and be afterwards repeated in another statute with a lesser penalty attached to it, a person ought not to be held liable to both. There may, no doubt, be two remedies for the same act, but they must be of a different nature": and "where the same offence is re-enacted with a different punishment it (the subsequent enactment) repeals the former law" (*d*).] This view was adopted after full consideration in *Fortescue v. Bethnal Green Vestry*, (1891) 2 Q. B. 170, 178.

With reference to Acts not creating offences the rule seems somewhat different. It is suggested by Lord Bramwell in *Mews v. R.* (1882), 8 App. Cas. 339, 350, that where a prior Act provides for one mode of paying an expense, and a subsequent Act provides a different mode of paying the same expense, the later abrogates the earlier Act, and the Courts will not hold the two Acts to be alternative. But this rule cannot be adopted without qualification. If the later Act puts the expense upon a different public fund from that selected by the earlier Act, an inconsistency may be justly inferred; but when one Act saddles an individual and another a public fund, the two Acts can stand together; *e.g.*, in the case of costs. A felon may now be ordered to pay costs (*e*) incurred in prosecuting him, and the same costs are also imposed on the county rate (*f*). But it has never been, and could not be, even in the absence of the provisions of the Forfeitures Act, 1870, contended that the private liability excluded recourse to the public fund in a proper case.

10. As already stated (*g*), [when two statutes (*h*), although both are expressed in affirmative language, are contrary in matter, the latter abrogates the former. "The said rule," says Lord Coke, "that *leges posteriores priores contrarias abrogant*,

Contrariety  
between  
statutes.

(*d*) *Att.-Gen. v. Lockwood* (1842), 9 M. & W. 378, 391, Lord Abinger.

(*e*) By the Forfeitures Act, 1870 (33 & 34 Vict. c. 23).

(*f*) 7 Geo. 4, c. 64, ss. 22, 24.

(*g*) *Ante*, p. 304.

(*h*) *Quære* whether this is true with regard to two sections of the same statute. "How can we say," said Jervis, C.J., in *Castrique v. Page* (1853), 13 C. B. 461, that the "one provision is repealed by the other when both received the royal assent at the same moment?" *Contra*, per Wilberforce on Statute Law, 293; and see *Sheffield Corporation v. Sheffield Electric Light Co.* (1898) 1 Ch. 203.

was well agreed, but as to this purpose *contrarium est multiplex, scil.* if one is an express and material negative, and the last is an express and material affirmative, or if the first is affirmative and the latter negative. In matter, although both are affirmative, as by the statute of 33 Hen. 8, c. 23, it is enacted that 'if any person being examined before the King's Council . . . . shall confess any treason . . . . he shall be tried in any county where the King pleases, by his commission'; and afterwards another law was made (1 & 2 Ph. & Mar. c. 10) in these words: 'That all trials hereafter to be had for any treason, shall be had according to the course of the common law, and not otherwise': this latter Act (although the latter words had not been) hath abrogated the former, because they are contrary in matter; but it doth not abrogate the statute of 35 Hen. 8, c. 2, of trial of treason beyond the seas, notwithstanding the negative words, because it was not contrary in matter, for that was not triable by the common law." This passage was quoted and approved by Lord Blackburn in *Garnett v. Bradley* (1878), 3 App. Cas. 944, 965.

[This rule is often difficult to apply, because the question always arises whether the two statutes are actually or only apparently inconsistent with one another. "I do not think," said Grove, J., in *Hill v. Hall* (1876), 1 Ex. D. 411, 414, "that a mere accidental inconsistency between two statutes amounts to a total repeal of the earlier; such a doctrine might be pushed to a mischievous extent." "What words," said Dr. Lushington in *The India* (1864), 33 L. J. Adm. 193, "will establish a repeal by implication it is impossible to say from authority or decided cases. If, on the one hand, the general presumption must be against such a repeal, on the ground that the intention to repeal, if any had existed, would have been declared in express terms, so, on the other hand, it is not necessary that any express reference be made to the statute which it is intended to repeal. The prior statute would, I conceive, be repealed by implication if its provisions were wholly incompatible with a subsequent one; or if the two statutes together would lead to wholly absurd consequences; or if the entire subject-matter were taken away by the subsequent statute. Perhaps the most difficult case for consideration is where the subject-matter has been so dealt with in subsequent statutes that, according to all ordinary reasoning, the particular provision in the prior statutes could not have been intended to subsist, and yet, if it were left subsisting, no palpable absurdity would have been occasioned." It must therefore always be a question for the Court to decide whether this second rule is applicable or not, and in coming to a decision on this point, repeal by implication is never to be favoured (i). "We ought not to hold a sufficient Act repealed,

(i) *Dobbs v. Grand Junction Waterworks* (1882), 9 Q. B. D. 153; (1883), 9 App. Cas. 49, 54, 58; and *cf. Crocker v. Knight*, (1892) 1 Q. B. 702. The same view is taken in the United States: *Cope v. Cope* (1890), 137 U. S. 682, 686.

not expressly as it might have been, but by implication, without some strong reason" (k). However, "every Act must be considered with reference to the state of the law when it came into operation. Every Act is made either for the purpose of making a change in the law or for the purpose of better declaring the law, and its operation is not to be impeded by the mere fact that it is inconsistent with some previous enactment" (l).]

[From this rule it follows that if one statute enacts something in general terms, and afterwards another statute is passed on the same subject, which, although expressed in affirmative language, introduces special conditions and restrictions, the subsequent statute will usually be considered as repealing by implication the former, for "affirmative statutes introductive of a new law do imply a negative" (m). Thus, in *Ex parte Carruthers* (1807), 9 East, 44, it appeared that 13 Geo. 2, c. 28, s. 5, exempted from the impress service any harpooner or seaman in the Greenland trade, but 26 Geo. 3, c. 41, s. 17, enacted that "no harpooner whose name shall be inserted in a list shall be impressed," and it was held that this subsequent statute repealed by implication the general provisions of the former statute, by requiring something special to be done. So in *R. v. Justices of Worcester* (1816), 5 M. & S. 457, it was held that the Poor Law Act, 1601, s. 6, which gave an appeal generally to quarter sessions as to overseers' accounts, was virtually repealed by 17 Geo. 2, c. 38, s. 4, which required the appeal to be made to the next quarter sessions after the accounts had been audited. And in *Owen v. Saunders* (1696), 1 Lord Raymond, 159, it was held that 37 Hen. 8, c. 1, s. 3, by which the *custos rotulorum* might grant the clerkship of the peace *durante bene placito*, was virtually repealed by 1 Will. & Mar. sess. 1, c. 21, s. 5, by which it was enacted that it must be granted for life, because a grant *quamdiu se bene gesserit* was contrary to a grant *durante bene placito*.]

Repeal by special enactment of previous general enactment.

43 Eliz. c. 2.

In certain cases "special" Acts are held impliedly to repeal the general law. Thus, an authority to place a railway station on a particular site has been held to override the enactments relating to the general line of buildings in a public Act (n). In *Wandsworth D. B. W. v. Pretty*, (1899) 1 Q. B. 1, it was held that certain police regulations made under the Metropolitan Streets Act Amendment Act, 1867, did not impliedly repeal sect. 60 (7) of the Metropolitan Police Act, 1839 (2 & 3 Vict. c. 47), as to nuisances caused by exposing goods on the footway of streets.

31 & 32 Vict. c. 5.

Repeal by statutory rules.

(k) *G. W. R. v. Swindon and Cheltenham Rail. Co.* (1884), 9 App. Cas. 787, 809, Lord Bramwell.

(l) *Ely (Dean of) v. Bliss* (1852), 5 Beav. 374, Lord Langdale.

(m) *Harcourt v. Fox* (1693), 1 Show. 532, Eyres, J.

(n) *City and South London Subway Co. v. London County Council*, (1891) 2 Q. B. 513; cf. *London County Council v. London School Board*, (1892) 2 Q. B. 606.

Curtailement  
without  
repeal.

But the extent to which special Acts are held to override the general law or create exceptions depends on the particular terms of the statutes in question (*o*).

[If, however, a subsequent statute constitutes an exemption or exception from the operation of a previous statute, or "modifies its operation by the annexation of a condition" (*p*), the previous statute is not necessarily held to be repealed. And prior enactments may be rendered inoperative without being actually repealed. Thus, the priority given by the Savings Bank Act, 1863 (26 & 27 Vict. c. 87), s. 14, is taken away by sect. 40 of the Bankruptcy Act, 1883 (46 & 47 Vict. c. 52), although the prior Act is not repealed, inasmuch as subsequent legislation has rendered the prior enactment inapplicable in cases where the estate of an officer of a savings bank within the earlier Act is being administered in bankruptcy or in an administration action in the High Court (*q*), or, in other words, is *pro tanto* avoided by express enactment entirely inconsistent with it. In *Pilkington v. Cooke* (1847), 16 M. & W. 615, it appeared that by 29 Eliz. c. 4, certain penalties were imposed upon sheriffs who took larger fees for executing a *fi. fa.* than were allowed by statute, but that by 7 Will. 4 & 1 Vict. c. 55, it was enacted that certain larger fees might in future be taken by sheriffs if those fees were sanctioned by the judges. Consequently, it was argued that the subsequent Act of 7 Will. 4 & 1 Vict. c. 55 repealed the previous Act as being contrariant to it. It was held, however, that as the subsequent statute only gave a power to the judges of allowing, and thereby rendering lawful, an additional payment for executing a *fi. fa.*, which power the judges might never exercise, it was wholly contingent in each case which arose whether the previous statute would be altered or abrogated in pursuance of the subsequent one. Consequently, the operation of the subsequent statute was not to repeal the previous one, but merely to constitute an exemption from the previous statute in those cases in which the judges exercised the power given to them. So in *Mount v. Taylor* (1868), L. R. 3 C. P. 645, it was argued that the Statute of Gloucester (6 Edw. 1, c. 1), which gave the plaintiff a right to recover costs if he obtains any damages, was impliedly repealed by the County Court Acts, which enact that under certain circumstances a successful plaintiff shall not recover costs. "But," said Bovill, C.J., "it seems to me that these County Court Acts do not amount to a repeal of the Statute of Gloucester. This statute is the foundation of the plaintiff's right to costs, and the County Court Acts merely superadd conditions to the plaintiff's right to them in certain cases." And in commenting on this

(*o*) *Uckfield U. D. C. v. Crowborough District Water Co.*, (1899) 2 Q. B. 664 ; *L. C. C. v. Wandsworth District Gas Co.* (1900), 82 L. T. 562.

(*p*) *Mount v. Taylor* (1868), L. R. 3 C. P. at p. 654, Montague Smith, J.

(*q*) *Re Williams* (1887), 36 Ch. D. 573, 577, North, J.

case, *Hannen, J.*, in *Mirfin v. Attwood* (1869), L. R. 4 Q. B. 330, 340 (*r*), put the rule of law as follows: "To impose a condition on a class of plaintiffs before they shall be entitled to the benefit of a statute is not a repeal of that statute as to them, and it is only by a figure of speech that it can be so described; it merely in specified cases intercepts the operation of the statute, which statute remains in existence and unrepealed notwithstanding."]

[If a subsequent statute contains nothing else contrariant to a previous bare recital in the later Act, this "is not sufficient to repeal the positive provisions of a former statute without a clause of repeal" (*s*). And "it would be giving too much effect to the loose words in a schedule if we were to decide that they had repealed the positive directions of a previous Act" (*t*).]

Repeal not implied from bare recitals or scheduled forms.

[Even if a subsequent statute, taken strictly and grammatically, is contrariant to a previous statute, yet if at the same time the intention of the Legislature is apparent that the previous statute should not be repealed, it has been in several cases held that the previous statute is to remain unaffected by the subsequent one. Thus, in Bro. Abr. tit. Parliament, 52, is this passage: "Where a statute is that the merchant shall import bullion of two marks for every sack of wool exported, and then another statute was made that the merchant should not be charged unless for the ancient custom only, this does not repeal the first statute." So in *Williams v. Pritchard* (1790), 4 T. R. 2, where houses built on land embanked from the Thames in pursuance of 7 Geo. 3, c. 37, were by that Act declared to be vested in the owners of the adjoining ground *free from all taxes and assessments whatsoever*, the question arose whether that enactment exempted such houses from a land-tax imposed by a subsequent Act of 27 Geo. 3, c. 5. The Court, in holding that such houses were exempted by virtue of the previous Act of 7 Geo. 3, c. 37, said as follows: "It cannot be contended that a subsequent Act will not control the provisions of a prior statute if it were intended to have that operation, but there are several cases in the books to show that where the intention of the Legislature was apparent that the subsequent Act should not have such an operation, there, even though the words of the statute, taken strictly and grammatically, would repeal a former Act, the Courts of law, judging for the benefit of the subject, have held that they ought not to receive such a construction" (*u*).]

Intention to be regarded in grammar.

(*r*) *Hannen, J.*, differed from the majority of the Court, *Lush and Hayes, JJ.*, who held that in certain cases the Statute of Gloucester was repealed by the County Court Acts, and that having been once repealed by those Acts, it remained repealed by virtue of Lord Brougham's Act (13 & 14 Vict. c. 21), s. 5, notwithstanding the repeal of the repealing Acts. It is now wholly repealed.

(*s*) *Dove v. Gray* (1788), 2 T. R. 365, Ashhurst, J.

(*t*) *Allen v. Flicker* (1839), 10 A. & E. 640, 642, Patteson, J.

(*u*) Adopted and applied in the *Sion College case*, (1900) 2 Q. B. 581, 586, Channell, J.; affirmed, (1901) 1 K. B. 617 (C. A.).

*Generalia  
specialibus  
non derogant.*

[The general rule, that prior statutes are held to be repealed by implication by subsequent statutes if the two are repugnant, is said not to apply if the prior enactment is special and the subsequent enactment is general], the general rule of law being, as stated by Lord Selborne in *Seward v. Vera Cruz* (1885), 10 App. Cas. 59, 68, "that where there are general words in a later Act capable of reasonable and sensible application without extending them to subjects specially dealt with by earlier legislation, you are not to hold that earlier and special legislation indirectly repealed, altered, or derogated from merely by force of such general words, without any indication of a particular intention to do so." "There is a well-known rule which has application to this case, which is that a subsequent general Act does not affect a prior special Act by implication. That this is the law cannot be doubted, and the cases on the subject will be found collected in the third edition of Maxwell on the Interpretation of Statutes" (x). The general maxim is, *Generalia specialibus non derogant* (y). "special provisions will control general provisions" (y). "When the Legislature has given its attention to a separate subject and made provision for it, the presumption is that a subsequent general enactment is not intended to interfere with the special provision unless it manifests that intention very clearly. Each enactment must be construed in that respect according to its own subject-matter and its own terms" (z).

In *Garnett v. Bradley* (1878), 3 App. Cas. 944, after discussing and approving the opinion of Turner, L.J., upon the same subject, given in *Hawkins v. Gathercole* (1855), 6 De G. M. & G. 1, Lord Hatherley put the rule thus: "An Act directed towards a special object or special class of objects will not be repealed by a subsequent general Act embracing in its generality those particular objects, unless some reference be made, directly or by necessary inference, to the preceding special Act" (a). [Thus, in *R. v. Poor Law Commissioners* (1837), 6 A. & E. 1, it appeared that a local Act (59 Geo. 3, c. xxxix.) vested in certain *ex officio* directors and forty other persons nominated by the vestry the powers of overseers of the poor. While the parish was under this Act the Poor Law Commissioners were empowered by the Poor Law Act, 1834 (4 & 5 Will. 4, c. 76), s. 39, to "direct that the administration of the laws for the relief of the poor of any single parish shall be governed and administered by a board of guardians," to be elected in a certain prescribed manner. It was argued, and ultimately held by the majority

(x) *Lancashire Asylums Board v. Manchester Corporation*, (1900) 1 Q. B. 458, 470, Smith, L.J.

(y) Ilbert, *Legislative Methods and Forms*, p. 250.

(z) *Barker v. Edgar*, (1898) A. C. 748, 754, Lord Hobhouse.

(a) But see *Pollock v. Lands Improvement Co.* (1887), 37 Ch. D. 661; *Baird v. Timbridge Wells*, (1894) 2 Q. B. 867, 880; (1896) A. C. 434.



of the Court, that the local Act was not impliedly repealed by the subsequent public Act. "The Court is urged to decide," said Patteson, J., "that [sect. 39 of 4 & 5 Will. 4, c. 76], from the generality of the expressions used in it, applies to all parishes without any limitation, and that it necessarily gives an implied power to the Poor Law Commissioners to repeal at their will and pleasure all local Acts so far as they regard the administration of the Poor Laws. If the Legislature had intended to give so extensive a power to the Commissioners, it might reasonably have been expected that it would have done so in express terms. Even without express terms, if sect. 39 would be inoperative unless such construction were put upon it, the Court might be compelled to infer that such a power was implied. If, however, the section can be made fully effectual by a more limited construction, there can be no conclusive proof that the more extensive power was contemplated."]

The same canon of construction has also been applied in the case of the Rules of the Supreme Court (*b*) and of the County Courts (*c*), which have been held not to repeal the provisions of special statutes in particular cases as to costs. Conversely, the provisions of the Public Authorities Protection Act, 1893 (56 & 57 Vict. c. 61), have been held not to override the provisions of the Rules of the Supreme Court as to depriving a party of costs for good cause (*d*).

[The reason of this rule was thus stated by Wood, V.-C., in *London and Blackwall Rail. Co. v. Limehouse D. B. W.* (1857), 3 K. & J. 128 (*e*). "The Legislature," said he, "in passing a special Act, has entirely in its consideration some special power which is to be delegated to the body applying for the Act on public grounds. When a general Act is subsequently passed, it seems to be a necessary inference that the Legislature does not intend thereby to regulate all cases not specially brought before it, but looking to the general advantage of the community, without reference to particular cases, it gives large and general powers which in their generality might, except for this very wholesome rule of interpreting statutes, override the powers which, upon consideration of the particular case, the Legislature had before conferred by the special Act for the benefit of the public. The result of a contrary rule of construction would be that the Legislature, having authorised by a special Act the construction of some public work, would be supposed afterwards by a general Act to throw it into the power" of a few persons to prevent that public work from being carried out. Again, in *Thorpe v. Adams* (1871), L. R. 6 C. P. 125, 135, Bovill, C.J.,

(*b*) *Hasler v. Wood* (1884), 54 L. J. Q. B. 419.

(*c*) *Reeve v. Gibson*, (1891) 1 Q. B. 652.

(*d*) *Bostock v. Ramsey U. D. C.*, (1900) 1 Q. B. 357, Russell, L.C.J.; 2 Q. B. 616 (C. A.).

(*e*) Approved, *Mayor, &c. of Ashton-under-Lyne v. Pugh*, (1898) 1 Q. B. 45 (C. A.).

commented on this rule as follows: "When," said he, "we look at the mode in which Acts of Parliament are passed, it cannot be presumed or conceived that the Legislature had had brought to its consideration all the special Acts and legislation which affect companies or individuals, and that is one reason for the adoption of this general rule." And Willes, J., added: "The good sense of the law as laid down by my Lord is quite obvious, because if a Bill had been brought into Parliament to repeal a local Act, it would never have been allowed to pass into law without notice to the parties whose interests were affected by it, and opportunity being given to them to be heard in opposition to it, if necessary; whereas a general provision in a public Act is discussed with reference to general policy, and without any reference to private rights, with which there is no intention on the part of the Legislature to interfere." And again, in *Taylor v. Oldham* (1877), 4 Ch. D. 395, 410, Jessel, M.R., having stated the rule as given above as to the effect of general provisions in statutes upon special provisions, added: "If you once admit the doctrine that the general provisions are to overrule the special ones, anybody getting a clause inserted in a [private] Bill ought to be heard on every clause in it. It would be simply impossible to conduct private legislation at all if any such doctrine were admitted or prevailed." A good illustration of the working of this rule was given by Wood, V.-C., in *Fitzgerald v. Champneys* (1861), 30 L. J. Ch. 782, with regard to the operation of the Fines and Recoveries Act, "by which, in the largest words, every tenant in tail is authorised to bar his entail even in those estates in which the reversion is in the Crown, which formerly could not be barred." "No one," said the Vice-Chancellor, "would think of arguing, or could argue successfully, that the Act would affect the entails made by special Act of Parliament, such as the Marlborough, the Wellington, or the Shrewsbury entails (*f*). And the reason is that the Legislature, having had its attention directed to a special subject, and having observed all the circumstances of the case and provided for them, does not intend by a general enactment afterwards to derogate from its own Act where it makes no special mention of its intention to do so."]

Working of rule.

But special enactment repealed by implication if utterly repugnant to subsequent general Act.

But the rule must not be pressed too far, for, as Bramwell, L.J., said in *Pellas v. Neptune Ins. Co.* (1880), 5 C. P. D. 34, 40, "a general statute may repeal a particular statute." [And if a special enactment, whether it be in a public or a private Act, and a subsequent general Act are absolutely repugnant and inconsistent with one another, the Courts have no alternative but to declare the prior special enactment repealed by the subsequent general Act. Thus, in *Bramston v. Colchester* (1856), 6 E. & B. 246, it was held that the provisions of a local Act,

(*f*) *Vide post*, pp. 315, 316.

under which certain arrangements had been made for maintaining borough prisoners in county gaols, were repealed by the general Prison Act, 5 & 6 Vict. c. 98, s. 18; "for," said Lord Campbell, C.J., "I think it was the intention of the Legislature to sweep away all local peculiarities, though sanctioned by special Acts, and to establish one uniform system except in so far as there are express exceptions;" and Wightman, J., added, "It was intended to make one general law superseding all local laws as to prisons and repealing all local Acts." So, also, in *Great Central Gas Co. v. Clarke* (1863), 13 C. B. N. S. 838, it appeared that by a local Act the gas company was limited to a charge of 4s. per 1,000 feet, but by the subsequent public Act of 23 & 24 Vict. c. 125, the company was compelled to supply gas of a much better quality and was allowed to charge a maximum price of 4s. 6d. per 1,000 feet. It was contended, and the Court ultimately held, that the local Act was impliedly repealed by the subsequent public Act, and that consequently the limitation as to price contained in the local Act ceased to operate. "Although," said the Court, "the section in the private Act [which limits the price] is not in terms repealed, it is quite inconsistent with a clause in a subsequent public Act. That is sufficient to get rid of the clause in the private Act." So in *Daw v. Metropolitan Board of Works* (1862), 31 L. J. C. P. 223, it was held that the provision in 18 & 19 Vict. c. 120, s. 141, which gave to the Metropolitan Board power to alter the names of streets, impliedly repealed 11 & 12 Vict. c. clxiii. so far as it previously conferred the same power on the Commissioners of Sewers. In *Duncan v. Scottish N. E. Rail. Co.* (1870), L. R. 2 H. L. (Sc.) 20, it was held that the exemption from liability to pay rates which was conferred on the defendant railway company by the special Acts under which it was made was taken away by the subsequent Poor Law Amendment Act, because, as Lord Westbury said, "the rule given by this Poor Law Act is wholly inconsistent with the exemption contained in the company's special Acts" (g).] And in *Charnock v. Merchant*, (1900) 1 Q. B. 474, it was held that sect. 1 of the Criminal Evidence Act, 1898, was intended to establish a single rule for all criminal courts and cases, and to supersede the special rules as to evidence by the defendant in criminal cases created by previous statutes in the case of the particular offences there specified. But sect. 6 of the Act of 1898 pretty clearly indicates this intention.

61 & 62 Vict.  
c. 36.

In *The Duke of Marlborough's Parliamentary Estates* (1891), 8 Times L. R. 179, the question arose whether the Settled Land Acts had repealed the fetter on alienation of land imposed by 6 Anne, c. 6 (5 Anne, c. 3, Ruffhead), annexing certain

Effect of rule  
on estate Acts.

(g) Cf. *Sion College case*, (1900) 2 Q. B. 581: affirmed, (1901) 1 K. B. 617 (C. A.).

45 & 46 Vict.  
c. 38.

lands to the title of Duke of Marlborough. Chitty, J., said, at p. 181: "It was argued that, as these lands were by the statute of Anne annexed to the title, the enabling provisions of sect. 58 of the Act of 1882 were not applicable. However, to uphold this argument it would be necessary to make an addition to the saving clause in sect. 58, and this the Court was not at liberty to do. It was also said that general Acts of Parliament do not derogate from particular Acts, and that the *onus* of finding in the Act of 1882 enabling words rested on the applicant. He, however, held that there was a sufficient intention shown in the Act of repealing particular Acts. There was no ground for holding that the Legislature had any intention of restricting the operation of the enactment. It was to be borne in mind that the general object of the Act was to aid the owners of landed property in the circumstances of agricultural depression which existed when it was passed, and also that the tenant for life having recourse to the Act did not put the capital moneys into his own pocket, but they had to be expended for the benefit of the inheritance. Such considerations were as applicable to lands annexed to dignities as they were to lands in ordinary settlement" (*h*).

(*h*) [*Cf. Earl of Shrewsbury v. Scott* (1859), 6 C. B. N. S. 1.]

## CHAPTER VI.

## COMMENCEMENT AND DURATION OF EFFECT OF STATUTES.

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1. [It is a common practice to specify in Acts of Parliament the day in which the Act is to come into operation.] If a certain day is named, an Act (a) "which," as the Court said in *Tomlinson v. Bullock* (1878), 4 Q. B. D. 230, 232, "comes into operation on a given day, becomes law as soon as the day commences."

(a) In *Cole v. Porteous* (1892), 19 Ont. App. 111, this rule was applied so as to make a chattel mortgage executed at 12 noon subject to a statute which received the Royal assent at 3 p.m. on the same day.

Present rule.  
52 & 53 Vict.  
c. 63.

This rule is adopted in the Interpretation Act, 1889, s. 36, sub-s. 2, which provides that Acts passed after 1889, and any Order in Council, order, warrant, scheme, letters patent, rules, regulations, or bylaws made under such Acts, if expressed to come into operation on a particular day, are to be read as coming into operation immediately on the expiration of the previous day. [But an Act will not have any operation until the day for its commencement, even though the sections of the Act may have been framed as if it would come into operation immediately it receives the royal assent (*b*). The reason of this was pointed out in *Wood v. Riley* (1867), L. R. 3 C. P. 27, namely, "because the last thing settled is when the Act shall come into operation; therefore all the sections are to be considered as speaking from the date so fixed, and are all governed by the last section," which is the section which fixes the date. By 33 Geo. 3, c. 13, "the Clerk of the Parliaments shall endorse (in English) on every Act of Parliament which shall pass after April 8, 1793, immediately after the title of such Act, the day, month, and year when the same shall have passed and shall have received the royal assent, and such indorsement shall be taken to be a part of such Act, and to be the date of its commencement when no other commencement shall be therein provided." Consequently, as was pointed out by the Court in *R. v. Middlessex* (1831), 2 B. & Ad. 821, if one Act receives the royal assent a few days after another Act and the two Acts are contrariant, the one which received the royal assent last will have the effect of repealing the other. It is, however, sometimes specially enacted that a statute is to come into operation on some day prior to the day on which it receives the royal assent (*c*). Thus, in *Jamieson v. Att.-Gen.* (1833), Alcock & Nap. 375, it was held that 11 Geo. 4 & 1 Will. 4, c. 49, s. 1, which enacted that certain duties should be levied from March 15, 1830, but did not receive the royal assent until July 16, 1830, operated from March 15.] When two Acts come into force on the same day, it is not essential to hold them

(*b*) In the Real Property Limitation Act, 1874 (37 & 38 Vict. c. 57), the commencement of the Act was postponed till five years after its passing. *Cf.* the County Courts Act, 1903 (3 Edw. 7, c. 42), which came into force on 1st January, 1905, and the Railway Fires Act, 1905 (5 Edw. 7, c. 11), which does not come into force till 1st January, 1908. In the Local Government Acts of 1885 and 1894, and the London Government Act, 1899, the time for the commencement of the Act was left to be appointed by a department of the Government.

(*c*) [It is stated in Dwaris on Statutes (2nd ed.), 544, and also in Maxwell on Statutes (3rd ed.), 595, on the authority of *Burn v. Carvalho* (1835), 4 Nev. & Mann. 893, that "where a particular day is named for the commencement of the operation of a statute, but the royal assent is not given till a later day, the Act would come into operation only on the later day." This rule is not borne out by the case cited, which merely decides that as the language of sect. 30 of 3 & 4 Will. 4, c. 42, is "prospective only," it cannot apply to any proceeding which took place before the Act was passed. In *Freeman v. Moyes* (1834), 1 A. & E. 338, a different decision was come to as to sect. 31 of the same Act, the language of that section "not being in its terms prospective."]

consistent, and the later in order of the two may be held to repeal the other so far as the two are repugnant (*d*).

Where an Act passed after 1889 does not come into operation immediately upon its passing, and confers powers to do anything for the purpose of the Act, the power may be exercised, unless a contrary intention appears, before the commencement of the Act, so far as is necessary or expedient for the purpose of bringing the Act into (effective) operation at the date of its commencement. But no instrument made under the power comes into operation before the commencement of the Act unless a contrary intention appears in the Act (*e*). These provisions are intended to enable the judicial and administrative department of State to frame and publish Orders in Council and the like and Rules of Court in the interval between the passing and commencement of any Act for the due application and enforcement of which they deem expedient.

Provisions  
for anticipa-  
ting com-  
mencement.

[Before the passing of 33 Geo. 3, c. 13, all statutes were considered to come into operation on the first day of the session in which they were passed, unless they contained an express proviso to the contrary. This rule is stated by Lord Coke in 4 Inst. 25, and was acted upon in several early cases, though it does not appear to have been finally settled till the decision of the House of Lords in *Att.-Gen. v. Panter* (1772), 6 Bro. P. C. 486. In many cases (*f*) this was found to operate with great unfairness through the retrospective operation which Acts had in consequence; and where two Acts passed in the same session were repugnant, it was impossible, as Lord Tenterden pointed out in *R. v. Middlesex* (1831), 2 B. & Ad. 821, to know which of the two ought to be held to repeal the other. It was for these reasons, no doubt, that the above-mentioned statute (33 Geo. 3, c. 13) was passed.]

Former rule.

As a British (*g*) Act of Parliament comes into force, as a rule, on receipt of the royal assent, and does not depend on promulgation or publication (*h*), it binds the lieges in many cases before it has been physically possible to ascertain its terms. [In accordance with the principle of law expressed by the legal maxim, *Ignorantia juris neminem excusat*, the moment an Act of Parliament actually comes into operation, strictly speaking, every person who is amenable to the law of England is affected by it, even although it may be morally certain that he could not know that the statute in question had been passed. This was laid down by Lord Eldon in *R. v. Bailey* (1800), Russ. & R. 1, 4, where the prisoner was indicted under an Act of which it

Operation of  
Act upon  
person who  
could not  
know of its  
existence.

(*d*) *Sheffield Corporation v. Sheffield Electric Light Co.*, (1898) 1 Ch. 203, North, J.

(*e*) Int. Act, 1889, s. 37.

(*f*) See *Latless v. Holmes* (1792), 4 T. R. 660, *et cas. ibi cit*; *R. v. Bailey* (1800), Russ. & R. 1; *Bryant v. Withers* (1813), 2 M. & S. 123, 131.

(*g*) The law of America and France on this subject is discussed in Dwarries on Statutes (2nd ed.), p. 545.

(*h*) *Vide ante*, pp. 30, 31.

appeared he could not have known the existence at the time he committed the offence with which he was charged; but Lord Eldon told the jury that he was of opinion that he was, in strict law, guilty under the statute, although he could not have known that it had been passed, and that his ignorance of the fact could in no otherwise affect the case than that it might be the means of recommending him for a pardon; and this ruling was subsequently upheld by all the judges, and on their recommendation a pardon was granted to the prisoner, on the ground that he could not at the time he committed the offence have known of the existence of the Act of Parliament.] It may, however, be observed that it was suggested by the Court in *Burns v. Nowell* (1880), 5 Q. B. D. 444, 454, that "before a continuous act or proceeding, not originally unlawful, can be treated as unlawful by reason of the passing of an Act of Parliament by which it is in terms made so, a reasonable time must be allowed for its discontinuance, and though ignorance of the law may of itself be no excuse for any one who may act in contravention of it, such ignorance may nevertheless be taken into account, when it becomes necessary to consider the circumstances under which the Act or proceeding was continued, and when and how it was discontinued with a view to determine whether a reasonable time had elapsed without its being discontinued." It is desirable that some interval should be given for people to have a physical possibility of learning the terms of a new law, but this is not always possible, nor could any uniform delay between passing and commencement be safely prescribed.

Continuing  
Acts.

[If an Act is passed for the purpose of continuing an expiring Act, it is enacted by 48 Geo. 3, c. 106, that if the expiring "Act shall have expired before the Bill for continuing the same shall have received the royal assent, such continuing Act shall be deemed and taken to have effect from the date of the expiration of the Act intended to be continued as fully and effectually as if such continuing Act had actually passed before the expiration of such Act, except it be otherwise specially provided in such continuing Act: Provided nevertheless that nothing herein contained shall extend to affect any person with any punishment, penalty, or forfeiture by reason of anything done or omitted to be done by such person contrary to the provisions of the Act so continued between the expiration of the same and the date at which the Act continuing the same may receive the royal assent."]

Modifying  
Acts.

[If an Act passed after 1850 repeals wholly or in part any former enactment and substitutes provisions in place of the repealed enactment, the latter remains in force until the substituted provisions come into operation (i).]

(i) Interpretation Act, 1889, ss. 11 (2), 41, repealing and re-enacting Brougham's Act (13 & 14 Vict. c. 21), s. 6.



2. ["A statute is to be deemed to be retrospective (*k*) which takes away or impairs any vested right acquired under existing laws, or creates a new obligation, or imposes a new duty, or attaches a new disability in respect to transactions or considerations already past" (*l*). But a statute "is not properly called retrospective merely because a part of the requisites for its operation is drawn from a time antecedent to its passing" (*m*).] In *Lauri v. Renad*, (1892) 3 Ch. 402, 421, Lindley, L.J., said: "It is a fundamental rule of English law that no statute shall be construed so as to have a retrospective operation, unless its language is such as plainly to require such a construction. And the same rule involves another and subordinate rule, to the effect that a statute is not to be construed so as to have a greater retrospective operation than its language renders necessary." "There are many cases upon the general doctrine whether an Act of Parliament may be read retrospectively or not, and there are many cases upon the meaning of particular statutes. But one has the general law concisely stated by Lord Hatherley in his judgment in *Pardo v. Bingham* (1870), L. R. 4 Ch. 735, 739, 740, where he says: 'The question is . . . secondly, whether on general principles the statute ought in this particular section to be held to operate retrospectively, the general rule of law undoubtedly being, that except there be a clear indication either from the subject-matter or from the wording of a statute, the statute is not to receive a retrospective construction. . . . In fact, we must look at the general scope and purview of the statute, and at the remedy sought to be applied, and consider what was the former state of the law, and what it was the Legislature contemplated'" (*n*). In *Mohammad Abussamad v. Kurban Husein* (1903), 31 Ind. App. 30, 37, Lord Lindley said: "It is not, however, in accordance with sound principles of interpreting statutes to give them a retrospective effect." In this case the Judicial Committee declined to construe sects. 8 and 10 of the Indian Act No. I. of 1869, relating to the Cudh Talookdars, so as to deprive the successors to the estates of a person who had died before these sections came into force of the rights which they had acquired on his death. Revenue Acts are often made to take effect as from a day before their passing. But extremely plain language would be needed to render penal an act done before the passing of a statute (*o*).

Meaning of the word "retrospective" as applied to a statute.

(*k*) The word is somewhat ambiguous. *Allan v. Gold Reefs of W. Africa*, (1900) 1 Ch. 656, 673, Lindley, M.R.

(*l*) Sedgwick, Statutory Law (2nd ed.), 160.

(*m*) *R. v. Whitechapel* (1848), 12 Q. B. 127, Denman, L.C.J., where 9 & 10 Vict. c. 66, s. 2, was held to prevent the removal after its commencement of a pauper widow, proceedings for whose removal had been begun, but had not been completed before the Act passed.

(*n*) *Re Chapman*, (1896) 1 Ch. 323, 327, Kekewich, J.

(*o*) In *O'Donohue v. Britz* (1904), 1 Australia C. L. R. 391, an unsuccessful attempt was made to prosecute, under the Commonwealth Customs Act, 1901 (which came into force on October 4th, 1901), a person who, on 16th October,

Difference  
between "re-  
tro-spective"  
and "*ex post  
facto*"  
statutes.

[A retrospective statute is different from an *ex post facto* statute (*p*). "Every *ex post facto* law," said Chase, J., in *Calder v. Bull* (1798), 3 Dallas (U. S.), at p. 391, "must necessarily be retrospective, but every retrospective law is not an *ex post facto* law. Every law that takes away or impairs rights vested agreeably to existing laws is retrospective. Thus, statutes of oblivion or pardon are certainly retrospective, and literally both concerning and after the facts committed. But I do not consider any law *ex post facto* that mollifies the rigour of the criminal law, but only those that create or aggravate the crime, or increase the punishment or change the rules of evidence for the purpose of conviction. . . . There is a great and apparent difference between making an unlawful act lawful and the making an innocent action criminal and punishing it as a crime" (*q*).]

Retrospec-  
tivity not  
presumed.

The Act of 1793 (33 Geo. 3, c. 13) in no way prevents Parliament from making an Act retrospective if the intention to do so is apparent. "It is obviously competent for the Legislature, in its wisdom, to make the provisions of an Act of Parliament retrospective" (*r*). ["No one denies," said Dr. Lushington in *The Ironsides* (1862), 31 L. J. P. M. & A. 131, "the competency of the Legislature to pass retrospective statutes if they think fit (*s*), and many times they have done so." Philosophical writers (*t*) have, it is true, denied that any Legislature ought to have such a power, and it is indisputable that to exercise it under ordinary circumstances must work great injustice.] But "before giving such a construction to an Act of Parliament one would require that it should either appear very clearly in the terms of the Act or arise by necessary and distinct interpretation" (*u*). And "perhaps no rule of construction is more firmly established than this—that a retrospective operation is not to be given to a statute so as to impair an existing right (*x*) or obligation otherwise than as regards

1901, made a declaration in New South Wales as to certain medicines not then taxable under the New South Wales Customs Tariff, but made taxable by the Commonwealth Customs Tariff Act, 1902, as from October 8th, 1901. As to the Excise Tariff Act, 1902, No. 11, see *Colonial Sugar Refining Co. v. Irving*, (1906) A. C. 360.

(*p*) [Blackstone (Comm. vol. i. p. 46) describes *ex post facto* laws as those by which "after an action indifferent in itself is committed, the Legislature then for the first time declares it to have been a crime, and inflicts a punishment upon the person who has committed it."] Acts of indemnity are, however, also *ex post facto* laws so far as they take away civil rights of action, and are statutory pardons as to criminal liability, and as to indemnity for acts done in exercise of martial law: *Phillips v. Eyre* (1870), L. R. 6 Q. B. 1; and Journ. Soc. Comp. Legislation, N. S., 1909, p. 60.

(*q*) Cited and approved in *Phillips v. Eyre* (1871), L. R. 6 Q. B. at p. 26, Willes, J.

(*r*) *Smith v. Callander*, (1901) A. C. 297, 305, Lord Ashbourne.

(*s*) The French code contains a positive provision that laws are not to have any retrospective operation. "*La loi ne dispose que pour l'avenir, elle n'a point d'effet rétroactif*": Code Civil, Art. 2.

(*t*) See Sedgwick, Statutory Law (2nd ed.), 160.

(*u*) *Smith v. Callander*, (1901) A. C. 305, Lord Ashbourne.

(*x*) And see *Schmidt v. Rutz* (1901), 31 Canada, 602, where Strong, C.J., said: "That the Legislature has demonstrated an intention to enact retro-

matter of procedure (*y*), unless that effect cannot be avoided without doing violence to the language of the enactment. If the enactment is expressed in language which is fairly capable of either interpretation, it ought to be construed as prospective only. Some of the many authorities for this proposition are:—*Main v. Stark* (1890), 15 App. Cas. 384, 387, Lord Selborne; *Gilmore v. Shuter* (1679), 2 Mod. 310, on the Statute of Frauds; *Moon v. Durden* (1848), 2 Ex. 22, on the Gaming Acts; *Hickson v. Darlow* (1883), 23 Ch. D. 690, on the Bills of Sale Acts; *Waugh v. Middleton* (1853), 8 Ex. 352, an extreme case, but not disapproved of in *Larpent v. Bibby* (1855), 5 H. L. C. 481; *Williams v. Harding* (1866), L. R. 1 H. L. 9; *Hough v. Windus* (1884), 12 Q. B. D. 224; and *Ellis v. M'Cormick* (1869), L. R. 4 Q. B. 271, on the Bankruptcy Acts; *Re Joseph Suche & Co., Limited* (1875), 1 Ch. D. 48, on sect. 10 of the Judicature Act, 1875" (*z*).

[In *Gairdner v. Lucas* (1878), 3 App. Cas. 601, Lord O'Hagan said: "Unless there is some declared intention of the Legislature—clear and unequivocal—or unless there are some circumstances rendering it inevitable that we should take the other view, we are to presume that an Act is prospective, and not retrospective." In *Reid v. Reid* (1886), 31 Ch. D. 408, Bowen, L.J., said: "The particular rule of construction which has been referred to, but which is valuable only when the words of an Act of Parliament are not plain, is embodied in the well-known trite maxim, *Omnis nova constitutio futuris formam imponere debet non preteritis* (*a*)—that is, that, except in special cases, the new law ought to be construed so as to interfere as little as possible with vested rights. It seems to me that even in construing an Act which is to a certain extent retrospective, and in construing a section which is to a certain extent retrospective, we ought, nevertheless, to bear in mind that maxim as applicable whenever we reach the line at which the words of the section cease to be plain. That is a necessary and logical corollary of the general proposition, that you ought not to give a larger retrospective power to a section, even in an Act which is to some extent intended to be retrospective, than you can plainly see the Legislature meant" (*b*).

spectively to a certain extent is not sufficient to warrant a retroactive operation carried beyond the meaning of the terms used strictly construed. . . . It is said that to restrict the latter part of the amending clause . . . is to attribute to it a very insignificant modicum of relief. The answer must be that it is the very intent of this rule of interpretation, designed to prevent interference with rights of property except in cases where the unmistakable language of the Legislature demands an *ex post facto* construction."

(*y*) *Ide post*, p. 327.

(*z*) *Re Athlumney*, (1898) 2 Q. B. 547, 552, Wright, J.

(*a*) [2 Inst. 292, adopted in *Urquhart v. Urquhart* (1853), 1 Macq. H. L. (Sc.) 662, Lord Cranworth. See *Gilmore v. Shuter* (1679), 2 Mod. 310; *Ashburnham v. Bradshaw* (1740), 2 Atk. 36.]

(*b*) *Cf. R. v. Ipswich Union* (1877), 2 Q. B. D. 269, where Cockburn, C.J., stated that statutes changing the law are presumably intended to apply to a state

In *Young v. Adams*, (1898) App. Cas. 469, the Judicial Committee had to consider whether a New South Wales Civil Service Act (59 Vict. No. 25) was retrospective in its operation. Lord Watson said (p. 476): "It does not seem to be very probable that the Legislature should intend to extinguish, by means of retrospective enactment, rights and interests which might have already been valid in a very limited class of persons, consisting, so far as appears, of one individual, viz., the respondent. In such cases their lordships are of opinion that the rule laid down by Erle, C.J., in *Midland Rail. Co. v. Pye*, 10 C.B.N. S. 179, 191, ought to apply. They think that in the present case the learned Chief-Justice (of N. S. Wales) was right in saying that a retrospective operation ought not to be given to the statute unless the intention of the Legislature that it should be so construed is expressed in plain and unambiguous language, because it manifestly shocks our sense of justice that an act, legal at the time of doing it, should be made unlawful by some new enactment. The ratio is equally apparent when a new enactment is said to convert an act wrongfully done into a legal act, and to deprive the person injured of the remedy which the law then gave him."

Rates.

[With regard to the effect of statutes authorising the levy of rates, it was pointed out by Cockburn, C.J., in *Bradford Union v. Wills* (1868), L. R. 3 Q. B. 604, 616, that the principle "was adopted long ago, and has been long acted upon," that if the language of the statute is *prima facie* prospective "the rate must be prospective, and not retrospective, so that the expenses shall fall on the ratepayers who are ratepayers at the moment of the expenses being incurred." "Consequently," he added, "whenever the Legislature thinks it expedient to authorise the making of retrospective rates, it fixes the period as to which the rate may be retrospectively made."]

Licensing.

The Welsh Sunday Closing Act, 1881 (44 & 45 Vict. c. 61), received the royal assent on August 27, 1881. Sect. 3 provided that it should come into operation on the day next appointed for the annual licensing meeting in each place in Wales. By 9 Geo. 4, c. 61, ss. 1, 2, the licensing meeting must be held between August 20 and September 14 in each year, and the day must be appointed at least twenty-one days before the meeting is held. In *Richards v. McBride* (1882), 8 Q. B. D. 119, it was held—(1) that although the preamble suggested the desirability of a change in the law, this did not give any clue as to fixing the commencement of the Act; (2) that the Act came into force at the licensing meetings of 1882, and not at those of 1881, inasmuch as it was impossible

of facts coming into existence after the commencement of the statute. See also the Canadian cases, *Association Pharmaceutique de Quebec v. Livernois* (1900), 31 Canada 43, 60, Sedgwick, J.; *Schmidt v. Ritz* (1901), 31 Canada, 602, 605, 606, Strong, C.J.

to appoint the meetings for 1881 in the interval between the passing of the Act and the last day for which they could by law be held; (3) that the Court could not construe the Act on the assumption that it was drawn in the expectation that it would pass much sooner than it did, or receive evidence to support the suggestion.

[It being, then, the general rule of law that statutes are not to operate retrospectively, we have now to consider under what circumstances this general rule has been departed from, and to examine the grounds, so far as they can be ascertained, for such departure.]

[(1) Sometimes it is expressly enacted that an enactment shall be retrospective; thus, by 23 & 24 Vict. c. 38, s. 12, it is enacted that "clause 32 of 22 & 23 Vict. c. 35, shall operate retrospectively."]

(1) By express enactment.

[(2) If it is a necessary implication from the language employed that the Legislature intended a particular section to have a retrospective operation, the Courts will give it such an operation. "Baron Parke," said Lord Hatherley in *Pardo v. Bingham* (1870), 4 Ch. App. 735, 740, "did not consider it an invariable rule that a statute could not be retrospective unless so expressed in the very terms of the section which had to be construed, and said that the question in each case was whether the Legislature had sufficiently expressed that intention. In fact, we must look to the general scope and purview of the statute, and at the remedy sought to be applied, and consider what was the former state of the law, and what it was that the Legislature contemplated." But a statute is not to be read retrospectively except of necessity. In *Main v. Stark* (1890), 15 App. Cas. at p. 388, Lord Selborne said: "Their lordships, of course, do not say that there might not be something in the context of an Act of Parliament, or to be collected from its language, which might give to words *prima facie* prospective a larger operation, but they ought not to receive a larger operation unless you find some reason for giving it." And, "Words not requiring a retrospective operation, so as to affect an existing statute prejudicially, ought not to be so construed." In *Reynolds v. Att.-Gen. for Nova Scotia*, (1896) App. Cas. 240, 244, it was held that this rule did not extend to protect from the effect of a repeal a privilege which did not amount to an accrued right (c).

(2) By necessary implication from the language of the statute as interpreted by the Legislature.

In 1888 a restriction was for the first time imposed (d) on persons desiring to practise as patent agents, with a saving for

(c) In a New Zealand case on a proceeding under the Imperial Fugitive Offenders Act, 1881 (44 & 45 Vict. c. 69), it was held that a statute of Victoria (No. 1737), passed in 1901, operated to render penal disobedience to orders made under an earlier statute (the Marriage Act, 1890) of Victoria: *In re Coutts* (1902), 22 N. Z. L. R. 203. But cf. *R. v. Griffiths*, (1891) 2 Q. B. 145.

(d) By sect. 1 of the Patents, &c. Act, 1888 (51 & 52 Vict. c. 50).

rights acquired (*e*) before the Act came into force. By rules under that Act made in 1890, and having legislative force, the business of patent agent was put under regulations. In *Starey v. Graham*, (1899) 1 Q. B. 406, it was held that "right acquired" did not include a right on the part of persons practising as patent agents before the Act of 1888 to practise and describe themselves as such after the Act (p. 411, Channell, J.). The *ratio decidendi* was that prior to the Act of 1888 the law was silent as to patent agents, and that the freedom which then existed did not amount to a right recognised by law.

Presumption  
against  
taking away  
vested right.

It is a well "recognised rule that statutes should be interpreted, if possible, so as to respect vested rights" (*f*), and such a construction should never be adopted if the words are open to another construction (*g*). This rule is especially important with respect to statutes for acquiring lands for public purposes (*h*). For it is not to be presumed that interference with existing rights is intended by the Legislature, and if a statute be ambiguous the Court should lean to the interpretation which would support existing rights (*i*).

And in the absence of anything in an Act to show that it is to have a retrospective operation, it cannot be so construed as to have the effect of altering the law applicable to a claim in litigation at the time when the Act is passed (*k*), and so far as regards repealing Acts this rule is clearly recognised by sect. 38 (2) of the Interpretation Act, 1889 (*l*).

[So careful are the Courts in endeavouring to protect vested rights that we find that in several cases judges have refused to allow statutes to have a retrospective operation, although their language seemed to imply that such was the intention of the Legislature, because, if the statutes had been so construed, vested rights would have been defeated. In *Gairdner v. Lucas* (1878), 3 App. Cas. 603, Lord Blackburn stated this rule of law in the following way with regard to the effect of a statute upon a transaction past and closed, where the effect would be to alter a transaction already entered into: "Where," said he, "the effect would be to make that valid which was previously invalid, to make an instrument which had no effect at all, and from which the party was at liberty to depart as long as he pleased,

(*e*) This would be different in the case of repeals under sect. 38 (1) of the Interpretation Act, 1889.

(*f*) *Hough v. Windus* (1884), 12 Q. B. D. at p. 237, Bowen, L.J.

(*g*) See *Cowan v. Lockyer* (1904), 1 Australia C. L. R. 460, 466, Griffith, C.J. The case turned on the suggested retrospectivity of the Commonwealth Customs Act (No. 14) of 1902.

(*h*) See *Chesman v. Clinton* (1821), 4 Bligh, 1; *Clissold v. Perry* (1904), 1 Australia C. L. R. 363, 373, Griffith, C.J.

(*i*) *Macdonald (Lord) v. Finlayson* (1885), 12 Rettie (Sc.) 231, Lord Mure.

(*k*) *Leeds and County Bank v. Walker* (1883), 11 Q. B. D. 84, at p. 91, Denman, J., citing Maxwell on Statutes (1st ed.), 190; and see Wilberforce on Statutes, 157.

(*l*) *Vide ante*, p. 290.

binding—I think the *prima facie* construction of the Act is that it is not to be retrospective, and it would require strong reasons to show that it is not the case.”] In *Eyre v. Wynn-Mackenzie*, (1896) 1 Ch. 135, the Court of Appeal held that the Mortgages’ Legal Costs Act, 1893, did not affect judgments already given when it was passed, though sect. 3 was retrospective (*m*). [In *Moon v. Durden* (1848), 2 Ex. 22, an action to recover a sum of money alleged to have been won upon a wager was commenced in June, 1845. In August, 1845, the Gaming Act, 1845, was passed, which enacted, in sect. 18, that “no suit shall be brought or maintained for recovering” any such sum of “money,” and the question was whether that enactment was retrospective so as to defeat an action already commenced. It was held that it was not retrospective, and Parke, B., in his judgment, said: “It seems a strong thing to hold that the Legislature could have meant that a party who under a contract made prior to the Act had as perfect a title to recover a sum of money as he had to any of his personal property, should be totally deprived of it without compensation”] (*n*); and in *The Idem*, (1899) P. 236, Smith, L.J., said: “The rule applicable to cases of this sort is well stated by Wilde, B., in *Wright v. Hale* (1860), 6 H. & N. 227, 232, viz., that when a new enactment deals with rights of action, unless it is so expressed in the Act, an existing right of action is not taken away.”

But there is no vested right in procedure or costs. Enactments dealing with these subjects apply to pending actions, unless the contrary is expressed.

[“It is a general rule” (*o*), said Jessel, M.R., in *Re Joseph Suche & Co., Ltd.* (1875), 1 Ch. D. 48, 50, “that when the Legislature alters the rights of parties by taking away or conferring any right of action, its enactments, unless in express terms they apply to pending actions, do not affect them. But there is an exception to this rule, namely, where enactments merely affect procedure, and do not extend to rights of action” (*p*). For, as Lord Blackburn said in *Gairdner v. Lucas* (1878), 3 App. Cas. 601, 603, “it is perfectly settled that if the Legislature forms a new procedure, so that, instead of proceeding in this form or that,

No vested right in procedure or costs.

(*m*) [Cf. *Couch v. Jeffries* (1769), 4 Burr. 2460, Lord Mansfield.]

(*n*) See also *Knight v. Lee*, (1893) 1 Q. B. 41, where it was held that the Gaming Act, 1892 (55 & 56 Vict. c. 9), was not retrospective.

(*o*) [This rule was for the first time distinctly enunciated by the Court of Exchequer in *Wright v. Hale* (1860), 30 L. J. Ex. 40. “I have always understood,” said Pollock, C.B. “that there is a considerable difference between laws which affect vested rights and those laws which merely affect the proceedings of Courts; as, for instance, declaring what shall be deemed good service, what shall be the criterion to the right to costs, how much costs shall be paid, the manner in which witnesses shall be paid, or what witnesses the party shall be entitled to, and so on. . . . I do not think a matter of that sort can be called a right in any sense in which Lord Coke in his Institutes has spoken of rights.” See also *Pickup v. Wharton* (1832), 2 Cr. & M. 401; *Cox v. Thomason* (1834), 2 Cr. & J. 499; and *Pinhorn v. Sonster* (1861), 21 L. J. Ex. 336.]

(*p*) Cf. *Re Athlumney*, (1898) 2 Q. B. 547, 552, Wright, J.

you should proceed in another and different way, clearly these bygone transactions are to be sued for and enforced according to the form of procedure. Alterations in the form of procedure are always retrospective, unless there is some good reason or other why they should not be." In *Watton v. Watton* (1866), L. R. 1 P. & M. 227, 229, Sir James Wilde said: "A statute cannot be said to have a retrospective operation because it applies a new mode of procedure to suits commenced before its passing" (g). In other words, if a statute deals merely with the procedure in an action, and does not affect the rights of the parties, "it will," as Blackburn, J., said in *Kimbray v. Draper* (1868), L. R. 3 Q. B. 160, 163, "be held to apply *prima facie* to all actions, pending as well as future" (g).]

In *Colonial Sugar Refining Co. v. Irving*, (1905) App. Cas. 369, an application was made to the Judicial Committee to dismiss an appeal from the judgment of the Supreme Court of Queensland, on the ground that the power of the Court below to give leave to appeal had been taken away by sect. 39 of the Commonwealth Judiciary Act, 1903. The action in which the appeal was brought was commenced on October 25, 1902. The Judiciary Act came into force on August 25, 1903, and the leave to appeal was given on September 4, 1903. The Judicial Committee dismissed the application, saying (per Lord Macnaghten, p. 372): "As regards the general principles applicable to the case there is no controversy. On the one hand it is not disputed that if the matter in question be a matter of procedure only, the petition (to dismiss) is well-founded. On the other hand, if it be more than a matter of procedure, if it touches a right in existence at the passing of the (Judiciary) Act, it is conceded that in accordance with a long line of authorities from the time of Lord Coke to the present day the appellants (the Sugar Co.) would be entitled to succeed. The Judiciary Act is not retrospective by express enactment or by necessary intendment, and therefore the only question is, was the appeal to His Majesty in Council a right valid in the appellants at the date of the passing of the Act, or was it a mere matter of procedure? It seems to their lordships that the question does not admit of doubt. To deprive a suitor in a pending action to an appeal to a superior tribunal which belonged to him as of right is a very different thing from regulating procedure."

In accordance with this rule, the Bankruptcy Act, 1883 (r), was held in *Ex parte Pratt* (1884), 12 Q. B. D. 334, 341,

(g) Adopted in *Att.-Gen. v. Theobald* (1890), 24 Q. B. D. 557.

(r) The retrospectivity of other sections of the Act has been discussed, e.g., sect. 32 in *Bourke v. Nutt*, (1894) 1 Q. B. 725; and also the retrospectivity of sects. 6, 8, 23, 25, 26 of the Bankruptcy Act, 1890, in *Re Norman*, (1893) 2 Q. B. 369 (C. A.); *Re v. Griffiths*, (1895) 2 Q. B. 145 (C. C. R.); *Re 1895*, (1898) 2 Q. B. 547; *Re Raison* (1891), 60 L. J. Q. B. 256; *Hough v. Windus* (1884), 14 Q. B. D. 220.



Fry, L.J., to save proceedings pending under the Act of 1869, but to require all subsequent proceedings, even if founded on the earlier Act, to conform to the procedure laid down in the later Act (s). In *Quilter v. Mapleson* (1882), 9 Q. B. D. 672, it was held that the provisions of the Conveyancing Act, 1881, giving lessees, in certain events, a means of obtaining relief against a forfeiture for certain breaches of covenant, were retrospective, so as to be available in an action of ejectment pending when it came into force, and in which judgment had been given in the Court of first instance, but in which execution had been stayed. In *Dibb v. Walker*, (1893) 2 Ch. 433, Chitty, J., treated sect. 25 of the Judicature Act, 1873, as dealing with matter of procedure rather than as matter of right, and as plainly retrospective. And in *Kemp v. Wright*, (1895) 1 Ch. 121, the Court treated sect. 10 of the Building Societies Act, 1894, as applicable to a society, dissolution of which began before, but was not completed till after, the commencement of the Act. In *The Ydun*, (1899) P. 236, it was held that the Public Authorities Protection Act, 1893, dealt with procedure only. And in *R. v. Chandra Dharna*, (1905) 2 K. B. 335, the Court for Crown Cases Reserved held that sect. 27 of the Prevention of Cruelty to Children Act, 1904, which substituted six months for three months as the limit of time for proceedings under sect. 5 of the Criminal Law Amendment Act, 1885, related to procedure, and applied to offences committed within three months of the date when it came into force (Oct. 1, 1904).

"One exception to the general rule has sometimes been suggested, viz., that where, as here, the commencement of the operation of an Act is suspended for a time, this is an indication that no further restriction upon retrospective operations is intended (t). But this exception seems never to have been suggested except in relation to enactments such as Statutes of Limitation, and even in relation to these it is questioned in *Moon v. Durden*, 2 Ex. 22" (u). [This suggested exception was the main ground for the decision of the Court in *Towler v. Chatterton* (1829), 6 Bing. 258. In that case, to an action of *indebitatus assumpsit* there was a plea of the Statute of Limitations. The plaintiff proved a verbal promise to pay made by the defendant in February, 1828; the action was commenced in January, 1829, and the question was whether the verbal promise made in February, 1828, was sufficient to take the case out of Lord Tenterden's Act (9 Geo. 4, c. 14), passed in May, 1828, which enacted, in sect. 1, that no promise by words only, and not in writing, should be sufficient to take a case out of the

Effect of a postponing clause.

(s) In statutes passed after 1889 the rule depends on sect. 38 (2) of the Interpretation Act, 1889.

(t) In sect. 3 of the Bankruptcy Act, 1890.

(u) *Re Athlumney*, (1898) 2 Q. B. 547, 553, Wright, J.

operation of the statute. By sect. 10 it was enacted that the Act should not come into operation until January 1, 1829. It was held that the verbal promise in February, 1828, was of no avail, for that the statute, after it had once come into operation, applied to past as well as to future transactions. There are also two *nisi prius* decisions on the same point, which are cited in *Towler v. Chatterton*, and which even go further, for in them it was held that the statute applied to actions commenced before January 1, 1829, if the actual trial did not take place until after that date. These three decisions were commented upon somewhat adversely by Rolfe, B., in an elaborate judgment in *Moon v. Durden* (1848), 2 Ex. 33. He there said that it appeared that the decision of *Towler v. Chatterton* was founded mainly on the fact that by sect. 10 the Act would not come into operation until the January next after its passing, and that from that it had been inferred that when that day arrived the Act was in full operation as to all contracts, past as well as future. "Now," he continued, "if the meaning of sect. 10 be that it was meant to exclude from its operation all actions brought before January 1, 1829, then the statute would work no real injustice to any one. But the Court, in support of its judgment, refers to the two *nisi prius* cases in which it was held that the statute applied in the case of actions brought before January 1, 1829, if the trials did not occur till after that date, on the ground apparently that the judge was to treat the statute as being in force at the time of the trial, and therefore conclusively binding him with respect to what evidence he was to receive. If this narrow construction is to be put upon the statute, it is obvious that the 10th section must in many cases have been a mere illusory protection. I therefore feel bound to say that I cannot think these *nisi prius* cases rightly decided. Whether the decision in *Towler v. Chatterton* is correct would depend on whether the true meaning of the 10th section was to fix a date before which all actions must be brought, which is the construction adopted by the Court in that case. It is worthy of remark that Lord Tenterden's Act points to a writing *to be* signed by the parties, that is, to future acts only, so that the decision giving to that section a retrospective operation was not a just one, even in conformity with the most narrow construction of its language." Notwithstanding these criticisms of Rolfe, B., *Towler v. Chatterton* was followed in *R. v. Leeds and Bradford Rail. Co.* (1852), 21 L. J. M. C. 193. In that case, damage having been done by the railway company to the land of one Edmondson in constructing their line in the years 1846 and 1847, he, Edmondson, had obtained an award from certain justices under the Lands Clauses Consolidation Act, 1845 (8 & 9 Vict. c. 18), ss. 22, 24, of a sum of money to be paid by the company as compensation. This award was not obtained, however, until

three years after, *i.e.*, in 1850. In the year 1848 the Summary Jurisdiction Act (11 & 12 Vict. c. 43) was passed (and came into operation six weeks after its passing), by which it was enacted in sect. 11 that such awards as these must be applied for and obtained within six months from the time when the damage was done. The question therefore arose whether this Act had a retrospective operation and was to apply to cases of damage done before its passing. The Court decided that it was retrospective, and Lord Campbell, C.J., in giving judgment, said: "If the Act had come into operation immediately after the time of its being passed, the hardship would have been so great that we might have inferred an intention on the part of the Legislature not to give it a retrospective operation, but when we see that it contains a provision suspending its operation for six weeks, that must be taken as an intimation that the Legislature has provided that as the period of time within which proceedings respecting antecedent damages or injuries might be taken before the proper tribunal. . . . A certain time was allowed before the Act was to come into operation, and that removes all difficulty. The case of *Towler v. Chatterton* is strongly in point" (x). Again, in *Wright v. Hale* (1860), 30 L. J. Ex. 40, Pollock, C.B., was to a certain extent influenced by the fact that the Act there in question was not to come into operation immediately upon its passing. For he says: "I think that where an Act of Parliament alters the proceedings which are to obtain in the administration of justice, and does not specially say that it shall not apply to any action already brought, but merely causes the operation to pause for a certain time, thus giving an opportunity for parties to retire from suits, it applies to actions already commenced. In this case the Act was not to take effect until October, and then in October it is as if it had said, 'In October this Act of Parliament is to take effect.'"]

The result of these decisions seems to be that the suggested exception is rarely if ever applicable, and cannot be enunciated as an undoubted rule of construction. Moreover, as pointed out by Wright, J., in *Re Athlumney*, (1898) 2 Q. B. 547, 553, the use of the past tense (*e.g.*, "shall have been"), which might suggest an inference as to retrospectivity in former statutes, is common in modern drafting in cases where retrospectivity is clearly not contemplated.

[Where a statute is passed for the purpose of supplying an obvious omission in a former statute, or, as Parke, J., said in *R. v. Dursley* (1832), 3 B. & Ad. 469, "to 'explain' a former statute," the subsequent statute has relation back to the time when the prior Act was passed. Thus, in *Att.-Gen. v. Pougett*

Declaratory  
Acts retro-  
spective.

(x) *R. v. Leeds and Bradford Rail. Co.* was dissented from in *R. v. Edwards* (1884), 13 Q. B. D. 586, on grounds not affecting the rule laid down by Lord Campbell.

(1816), 2 Price, 381, it appeared that by 53 Geo. 3, c. 33, a duty was imposed upon hides of 9s. 4d., but the Act omitted to state that it was to be 9s. 4d. per cwt., and to remedy this omission the 53 Geo. 3, c. 105, was passed. Between the passing of these two Acts some hides were exported, and it was contended that they were not liable to pay the duty of 9s. 4d. per cwt., but Thomson, C.B., in giving judgment for the Attorney-General, said: "The duty in this instance was in fact imposed by the first Act, but the gross mistake of the omission of the weight for which the sum expressed was to have been payable occasioned the amendment made by the subsequent Act, but that had reference to the former statute as soon as it passed, and they must be taken together as if they were one and the same Act."]

Where an Act is in its nature declaratory, the presumption against construing it retrospectively is inapplicable. In *Att.-Gen. v. Theobald* (1890), 24 Q. B. D. 557, sect. 11 of the Customs and Inland Revenue Act, 1889 (52 & 53 Vict. c. 7), as to the liability of voluntary settlements to stamp duty, was held retrospective, although the litigation in which its terms were involved had commenced before it was passed. Acts of this kind, like judgments, decide like cases pending when the judgments are given, but do not reopen decided cases (*y*). In *Young v. Adams*, (1898) App. Cas. 469, 476, Lord Watson held that *Att.-Gen. v. Theobald* and *R. v. D...* dealt with enactments having no analogy with the statute in question the Committee (*z*).

Statutes  
passed to pro-  
tect the pub-  
lic sometimes  
held retro-  
spective.

[If a statute is passed for the purpose of protecting the public against some evil or abuse, it will be allowed to operate retrospectively, although by such operation it will deprive some person or persons of a vested right. Thus, in *R. v. Vine* (1875), L. R. 10 Q. B. 195, it was held that 33 & 34 Vict. c. 29, s. 14, which enacts that "every person convicted of felony shall be for ever disqualified from selling spirits by retail," applied to a person who, after having been so convicted, had obtained a licence to sell spirits, and was actually holding it at the time when the Act came into force. It must, however, be observed that Lush, J., dissented from the judgment of the majority of the Court. "This is," said he, "a highly penal enactment. The sound and well-established canon of construction is that such an enactment is to be read as prospective, unless a contrary intention be clearly established from the language used. Now, I cannot collect any indication of an intention to make the enactment retrospective. . . . This is, therefore, the very case in which the above canon of construction applies."]

(*y*) See *Att.-Gen. v. Marquis of Hertford* (1849), 3 Ex. 670; *Steele v. M'Kinlay* (1880), 5 App. Cas. 755; *Eyre v. Wynn-Mackenzie*, (1896) 1 Ch. 135 (C. A.); *Day v. Kelland*, (1900) 2 Ch. 745 (C. A.).

(*z*) *Vide ante*, p. 324.

[Sometimes a statute, although not intended to be retrospective, will, as a matter of fact, have a retrospective operation. For instance, if two persons enter into a contract, and afterwards a statute is passed, which, as Cockburn, C.J., said in *Duke of Devonshire v. Barrow, &c. Co.* (1877), 2 Q. B. D. 286, 289, “engrafts an enactment upon an existing contract,” and thus operates so as to produce a result which is something quite different from the original intention of the contracting parties, such a statute has, as a matter of fact, a retrospective operation. Similarly, if a statute is passed which renders the performance of a contract impossible, the rule of law is that the contract is cancelled (a); consequently, in this case also the statute operates retrospectively. Thus, in *Brewster v. Kitchell* (1697), 1 Salk. 198, it was held that where “the question is whether a covenant be repealed by Act of Parliament, this is the difference, viz., where H. covenants not to do an act or thing which was lawful to do, and an Act of Parliament comes after and compels him to do it, the statute repeals the covenant. So, if H. covenants to do a thing which is lawful, and an Act of Parliament comes and hinders him from doing it, the covenant is repealed. But if a man covenants not to do a thing which was then unlawful, and an Act comes and makes it lawful, such an Act of Parliament does not repeal the covenant” (b). So, in *Baily v. De Crespigny* (1869), L. R. 4 Q. B. 180, the defendant let a piece of ground to the plaintiff, and covenanted that neither he nor his assigns would build on the land immediately adjoining it. After the making of this covenant, a railway company took, by compulsory purchase under the powers of their special Act, this adjoining piece of land and built upon it, whereupon the plaintiff sued the defendant; but it was held, on the authority of the above-mentioned case of *Brewster v. Kitchell*, that the defendant was not liable on the covenant, which the Legislature itself had prevented him from fulfilling. Again, if an Act of Parliament is passed which affects the subject-matter of a covenant, which had been previously entered into between two parties, such an Act of necessity operates retrospectively if and in so far as it alters the respective liabilities of the parties to the covenant. Thus, in *Mayor of Berwick v. Oswald* (1854), 23 L. J. Q. B. 324, the defendants had bound themselves as sureties for one Murray on his election as borough treasurer. At the time of his election the office was an annual one, but during the first year that he held it an Act of Parliament was passed by which it was made permanent subject to the approval

Some statutes  
virtually  
retrospective.

Also if it  
alters an  
existing  
covenant.

(a) [This rule of law is only a particular instance of that enunciated in *Taylor v. Caldwell* (1863), 32 L. J. Q. B. 164, and followed in *Howell v. Coupland* (1874), L. R. 9 Q. B. 462, viz., that if the performance of a covenant is by any means independent of the parties to it, rendered impossible, no action will lie for the non-performance of the covenant.]

(b) Followed in *Dos v. Rugeley* (1844), 6 Q. B. 107, and in *Newington L. B. v. Cottingham L. B.* (1879), 12 Ch. D. 725.

of the town council. The bond into which the defendants had entered was expressed to be for "any annual or other future election" to the office. It was argued for the defendants that they were not liable on this bond after the change in the law, for that they must be taken as only having bound themselves with reference to the state of the law as it existed at the time they entered into the bond. The case was eventually decided on a different point, but Maule, J., in his judgment expressly pointed out that there was nothing to prevent them from binding themselves with reference to a state of the law which did not exist at the time of entering into the bond, although, unless it clearly appeared to the contrary on the face of the bond, the ordinary assumption would be that "people in general are to be considered as contracting with reference to the state of the law as it existed at the time of making the contract" (c).]

Apparently  
no question  
effect of  
statutes upon  
wills.

[It was formerly held (d) that an Act of Parliament passed after a will has been made, but before the death of the testator, did not affect the will; but, as by the Wills Act (7 Will. 4 & 1 Vict. c. 26), s. 24, every will is now construed as taking effect as if it had been executed immediately before the death of the testator, if an Act of Parliament is passed after a will has been executed, but before the death of the testator, the will is affected by the Act. Such an Act has apparently, though not really, a retrospective effect. This was discussed in *Jones v. Ogle* (1873), 8 Ch. App. 192, a case in which the effect of the Apportionment Act, 1870, was under consideration. "If it were necessary to decide [the point]," said Lord Selborne, "I should have very great difficulty indeed in seeing my way to the conclusion that this Act of Parliament either was intended to alter or has in this case had the effect of altering the proper construction of words contained in a will made [but which had not come into effect] before the Act passed." In *Hastuck v. Pedley* (1875), L. R. 19 Eq. 271, 273, Jessel, M.R., held that a will made before the Apportionment Act, 1870, was affected by the Act. "It is said," said he, "the testators make their wills on the supposition that the state of the law will not be altered, and it is contended that this will ought to be construed as it would have been under the old law. The answer to this is that a testator who knows of an alteration in the law (as this testator must be presumed to have done), and does not choose to alter his will, must be taken to mean that his will shall take effect according to the new law.] Then it is said that the Act does not apply to specific devises, but I am of opinion that specific devises are as much under the law as any others (e). The Act does not affect the meaning of the will, it only alters its legal operation." Again, in *Constable v. Constable* (1880), 11 Ch. D. 685, Fry, J., said,

(c) Affirmed (1856), 5 H. L. C. 856.

(d) *Post*, p. 335, n.

(e) *Cf. Re Portal and Lamb* (1885), 30 Ch. D. 50.

with regard to the effect of the Apportionment Act, 1870, upon a will made before it passed: "It would be a very narrow construction to hold that [the Act] did not apply to every instrument coming into operation after the passing of the Act." The views expressed in these two cases were adopted by Davey, L.J., in *Re Bridges*, (1894) 1 Ch. 297, 302. In *Re March* (1885), 27 Ch. D. 166, a question arose as to the effect of the Married Women's Property Act, 1882, upon a will made before the commencement of the Act by a married woman who died after the Act came into operation. Lindley, L.J., said (p. 169): "The testatrix by her will, construed as it would have been when she made it, gave the appellant half her residuary estate. We can find nothing in the statute to alter this construction." And the Court declined to give the Act a retrospective operation in the absence of any express words or necessary implication. But in the late case of *Re Bridges*, (1894) 1 Ch. 297, 300, the Court held that the Mortmain and Charitable Uses Act, 1891, applied to a will made before the Act by a person dying after its passing. Lindley, L.J., treated the cases of *Jones v. Ogle* and *In re March* as good law, and said, "An extension, whether by a statute or otherwise, of a testator's power of disposition in the interval between the making of the will and his death does not alter the meaning of his language, although such extension will necessarily enlarge the legal effect of that language by making it apply to more objects than it would have previously applied to." In *Re Bowen*, (1892) 2 Ch. 291. Chitty, J., held that a will made by a married woman during coverture and before the coming into operation of the Married Women's Property Act, 1882, was effectual without re-execution to pass separate property acquired by her under that Act. And in *Re Wythe*, (1895) 2 Ch. 116, Romer, J., held that sect. 3 of the Married Women's Property Act, 1893, applied to the will of every married woman who died after the passing of the Act, whether the will was made before or after the passing of the Act (f).

33 & 34 Vict.  
c. 35.

45 & 46 Vict.  
c. 73.

54 & 55 Vict.  
c. 73.

56 & 57 Vict.  
c. 63.

3. [Every statute for which no time is limited is called a perpetual Act, and continues in force until it is repealed. "No doubt exists," said Dr. Lushington in *The India* (1864), 33 L. J. Adm. 193, "that a British (g) Act of Parliament does not

Duration  
presumably  
perpetual.

(f) See also *In re Hayes*, (1900) 2 Ch. 332, as to the effect of sects. 24, 27 of the Act on a will giving a power of disposition subsequent in date to a will purporting to exercise the power. As to the rule before the Wills Act, 1837, see *Ashburnham v. Bradshaw* (1740), 2 Atk. 36.

(g) [Acts of the Scottish Parliament may be tacitly repealed by "desuetude": vide Bell, Dict. Law Sc. (ed. Watson), p. 377, tit. Desuetude; Erskine (15th ed.), p. 7; *Hoggan v. Wood* (1890), 17 Rettie (Justiciary), 96. "The Power of the Law," said Lord Eldon in *Johnstone v. Stott* (1802), 4 Paton Sc. App. 255, "himself much at a loss here; he cannot conceive at what period of time a statute can be held as commencing to grow into desuetude, nor when it can be held to be totally worn out. All he can do is to submit to what great authorities have declared the law of Scotland to be." See also *Harvey v. Far-*

become inoperative by mere non-user, however long the time may have been since it was known to have been actually put in force" (*h*). So again in *Hebbert v. Purchas* (1870), L. R. 3 P. C. 605, the Judicial Committee observed that "it is quite true that neither contrary practice nor disuse can repeal the positive enactment of a statute." This principle appears equally applicable to English, Irish, and Colonial Acts, and the term "obsolete" cannot therefore strictly be applied to any such Acts (*i*).

Forgotten and  
effete Acts.

[But there are statutes to be found in the Statute-book which have never been acted upon since they were passed, and which apparently are only permitted to remain unrepealed because their existence has been forgotten (*k*). For instance, 13 Chas. 2, c. 5, enacted that every one commits a misdemeanour and is liable to a penalty who procures the signatures of more than twenty persons to a petition to the King or to Parliament without the previous permission of the justices or of the grand jury. "This singular provision," said Sir James Stephen (Digest of Criminal Law, p. xxxi.), "obviously exists only because it is forgotten." See also 12 Geo. 1, c. 29, s. 4, as to the summary punishment of solicitors who practise after conviction of barratry, perjury, or forgery. "This Act," says Sir James Stephen, p. xxxiv., "which has been forgotten, is perhaps the most iniquitous in the Statute-book."]

Effect of con-  
trary practice  
or non-user.

[Although a British statute cannot be actually repealed by contrary practice or non-user (*l*), yet its effect may be materially altered thereby. Thus, in *Leigh v. Kent* (1789), 3 T. R. 362, a motion was made to stay the proceedings in the cause on the ground that no affidavit had been filed in accordance with the

*guhar* (1872), L. R. 2 H. L. (Sc.) 195, note (1), as to "notour adultery," which, although made a capital offence by the Scots Act of 1563, c. 74, has for long not been treated as a criminal offence.] It is now repealed by The Statute Law Revision (Scotland) Act, 1906 (6 Edw. 7, c. 38).

(*h*) [An instance of this was the appointment by Mr. Gladstone of suffragan bishops of Dover and Nottingham under 26 Hen. 8, c. 14. No suffragan bishop had been appointed under this statute since the reign of Queen Elizabeth. See Life of Archbishop Parker, by Dean Hook, p. 450.]

(*i*) In *Dobbs v. Grand Junction Waterworks* (1882), 10 Q. B. D. 355, Lindley, L.J., said: "The real truth is that the greater portion of sect. 27 [of 7 Geo. 4, c. cxl.] has become obsolete." But the term was inaccurate if it was intended as an equivalent for "tacitly repealed."

(*j*) [Daines Barrington, in his *Observations on the Statutes* (3rd ed.), p. 40, points out that 20 Hen. 3, *Statutum Hibernie de coheredibus* (which remained unrepealed until the passing of the Statute Law Revision Act, 1863), is marked *obsolete* in all the editions of the statutes.]

(*l*) [As to non-user, the *discours préliminaire* of the Code Napoléon runs as follows: "Si nous n'avons pas formellement autorisé le mode d'abrogation par la désuétude ou le non usage c'est qu'il est peut-être été dangereux de la faire. Mais peut-on se dissimuler l'influence et l'utilité de ce corollaire de cette puissance invisible par laquelle sans secousse et sans commotion les peuples se font justice des mauvaises lois et qui semblent protéger la société contre les surprises faites au législateur contre lui-même." On this principle the Courts have been astute to defeat proceedings to enforce the Lord's Day Acts. See *Reid v. Wilson*, (1895) 1 Q. B. 315.



provisions of 21 Jas. 1, c. 4, s. 2. As to this objection, Lord Kenyon said, on discharging the motion: "I think no such affidavit is necessary; it has never been usual to take that step. And though, where the words of an Act of Parliament are plain, it cannot be repealed by non-user, yet where there has been a series of practice without any exception, it goes a great way to explain them where there is any ambiguity."]

[No statute can be absolutely perpetual, that is to say, incapable of being repealed, for, as Lord Coke says, 4 Inst. 43, "... though divers Parliaments have attempted to bar, restrain (*m*), suspend, qualify, or make void subsequent Parliaments, yet could they never effect it, for the latter Parliament hath even power to abrogate, suspend, qualify, explain, or make void the former in the whole or in any part thereof, notwithstanding any words of restraint, prohibition, or penalty in the former, for it is a maxim in the law of Parliament, *Quod leges posteriores priores contrarias abrogant*." Formerly there was one supposed exception to this rule, namely, that a statute could not be altered by any Act passed in the same session (*n*); but that exception was removed in 1850, since which date "any Act may be altered, amended, or repealed in the same session of Parliament" (*o*).]

Meaning of  
"perpetual"  
Acts.

[If an Act contains a proviso that it is to continue in force only for a certain specified time, it is called a temporary Act (*p*). Temporary Acts have the following peculiarities:—

Peculiar  
characteris-  
tics of tem-  
porary Acts.

(a) If an Act is in the first instance only a temporary one, and is continued from time to time by subsequent Acts, it is considered as a statute passed in the session when it was first passed, and not as a statute passed in the session in which the Act which continues its operation was passed. This was so held in *Shipman v. Henbest* (1790), 4 T. R. 109, a case in which (among other points) it was contended that 21 Jas. 1, c. 4, s. 4, which enabled a defendant, sued on any penal statute passed before 21 Jas. 1, to plead the general issue and to give special matter in evidence under it, did not apply to an action brought upon 1 Jas. 1, c. 22, because that statute, although originally passed before 21 Jas. 1, was only a temporary Act to continue to the next session of the next Parliament, and that in the next Parliament—viz., 6 Jas. 1—it was not continued, nor was it continued again till after the passing of 21 Jas. 1, c. 4. But Lord Kenyon said, as to this point, in his judgment (p. 114): "It has been argued that 21 Jas. 1, c. 4, does not extend to Acts passed subsequent to it, and that this may be considered as an action brought on a subsequent statute, 1 Jas. 1, c. 22, having

(a) Com-  
mencement.

(*m*) See Dicey, Law of the Constitution (6th ed.), 42.

(*n*) *Vide ante*, p. 289.

(*o*) Interpretation Act, 1889, s. 10, re-enacting sect. 1 of Brougham's Act, 13 & 14 Vict. c. 21.

(*p*) *Vide ante*, p. 63. For a list and classification of these Acts, see Parl. Pap. 1905—C—171.

expired before 21 Jas. 1, and having been only re-enacted since that time; but on this point I have not entertained a doubt from the beginning. We are all most clearly of opinion that this must be considered as an action on the 1 Jas. 1, c. 22, and that the subsequent laws which have continued it from time to time all give effect to it as an Act made in the first year of James I." (q). There is one reported case in which this doctrine does not appear to have been recognised, but, as the real decision in the case depended on another point, it cannot be considered of great importance. The case is that of *R. v. Phipoe* (1795), 2 Leach, C. C. 673, in which it was objected that an indictment founded on the temporary Act of 2 Geo. 2, c. 25, s. 3 (which Act was revived by 9 Geo. 2, c. 18), ought to have concluded in the plural number, "against the form of the *statutes* in such case made and provided"; but it was held otherwise, because it was considered that the *re-enacting* statute was the only statute in force against the offence. This, however, is contrary to the opinion expressed by the judges in *Dingley v. Moor* (1601), Cro. Eliz. 750, where, on a similar point having been raised, it was held that, "where a statute is made perpetual in whole or in part without any new addition or alteration, the offence may well be supposed against the form of the first statute, for that Act is made to continue." And the rule as laid down in the case first cited has been adopted by the Statute Law Revision Acts, which usually provide that where an enactment not comprised in the repeal schedule is (*inter alia*) confirmed, revived, or perpetuated by an enactment contained in the schedule, the confirmation, revivor, or perpetuation is not affected by the statute law revision repeal (r).

(b) Expiration.

(b) [As a general rule, and unless it contains some special provision to the contrary, after a temporary Act has expired no proceedings can be taken upon it, and it ceases to have any further effect (s). Therefore, offences committed against temporary Acts must be prosecuted and punished before the Act expires, and as soon as the Act expires any proceedings which are being taken against a person will *ipso facto* terminate (t).

(q) See also *R. v. Morgan* (1786), 2 Str. 1066; and *R. v. Swiny* (1832), Alc. & N. 132, Jebb, J.

(r) See 52 & 53 Vict. c. 24, s. 2 (S. L. R. Master and Servant).

(s) *Vide post*, p. 341.

(t) [O'Connell pleaded guilty to an offence against the temporary Act, 10 Geo. 4, c. 1, but before he had been sentenced the Act expired; consequently, no further proceedings could be taken against him as to that matter. See this point in the Life of the Right Hon. Francis Blackburne, by his son (Macmillan, 1874), pp. 86—94. It had been previously said by Sir Archibald Alison (History of Europe. iv. 299) that the point in O'Connell had been abandoned by Lord Grey's Government on political grounds, but Blackburne, in a correspondence with Sir Archibald, which is quoted in his Life, pointed out that the sole ground why O'Connell was not sentenced was in consequence of the expiration of the temporary Act making it impossible to take any further proceedings.]

There is a difference between the effect of the expiration of a temporary Act and the repeal of a perpetual Act, which is, as was said by Parke, B., in *Steavenson v. Oliver* (1841), 8 M. & W. 234, 241, that "if an Act is repealed, it becomes (except so far as it relates to transactions already completed (*u*) under it) as if it had never existed, but, if an Act expires, the duration of its provisions is a matter of construction." The case related to 6 Geo. 4, c. 133, s. 4, which enacted that every person who held a commission as surgeon in the army should be entitled to practise as an apothecary without having passed the usual examination. This Act was temporary, expiring on August 1, 1826; and it was contended that a person who under the Act was entitled to practise as an apothecary would lose his right after August 1, 1826. But the Court held that such a person would not be so deprived of his right, and Lord Abinger, C.B., in giving judgment, said: "It is by no means a consequence of an Act of Parliament expiring that rights acquired under it should likewise expire. The Act provides that persons who hold such commissions should be entitled to practise as apothecaries, and we cannot engraft on the statute a new qualification limiting that enactment." *Ex parte Higginbotham* (1840), 4 Jur. 1035, turned upon 39 Geo. 3, c. 79, s. 15, a temporary Act which declared certain places to be disorderly within the meaning of 36 Geo. 3, c. 8, and imposed a penalty upon their owners. It was contended that after the expiration of the Act there was no longer any offence for which a penalty could be imposed under 39 Geo. 3, c. 79, s. 15. Patteson, J., however, overruled this objection. "It is urged," said he, "that as 36 Geo. 3, c. 8, was to continue in force only for three years, sect. 15 of 39 Geo. 3, c. 79, expired [also at the end of the three years, that is to say] at the end of the actual session in which it was passed, but it is ridiculous to suppose such to have been the intention of the Legislature." In *New Windsor Corporation v. Taylor*, (1899) App. Cas. 41, 46, Halsbury, L.C., said: "Where a merely temporary Act supersedes an ancient franchise, it seems to me that it would be open to argument whether the mere fact of giving increased tolls for a short period, with a reference to Parliament as to what they may do in the next session following the expiration of the statute, does not point to an intention of the Legislature that, unless some new application has been made to Parliament, and subject to that application, the ancient dues are intended to be absolutely got rid of."

(c) [It is now the practice to pass an Expiring Laws Continuance Act (*x*) each session, and to put into a schedule each temporary Act which it is intended to continue. Formerly, however, it was the common practice of the Legislature to pass a general Act to continue all the temporary Acts relating to

(c) Continuance.

(*u*) Or rights or liabilities accrued. See *ante*, p. 290.

(*x*) See 5 Edw. 7, c. 21 (1905).

some particular subject, but without specifying the particular Acts to which it was intended to relate. This practice led in several cases to confusion, from the question arising as to whether or not it was the intention of the Legislature to include some particular Act amongst those to be continued. Thus, in *Barnes v. White* (1845), 14 L. J. M. C. 65, it appeared that an Act for amending the roads and highways of the Isle of Wight empowered commissioners to borrow money on the tolls, but the Act was only temporary, and it was argued that 4 & 5 Will. 4, c. 10, which enacted that "all and every Act and Acts for making, amending, and repairing any turnpike roads in Great Britain which will expire with the present or next session of Parliament is and are hereby continued," did not include the above-mentioned Act, because the Act was not merely a statute for making, amending, and repairing turnpike roads, but for something more. The Court ultimately decided, that the temporary Act in question was intended to be continued: but the question could never have been raised had the Legislature done what is now usual in Expiring Laws Continuance Acts, namely, put into a schedule the different Acts or parts of Acts intended to be continued.]

(d) Revivor.

(d) It is now rare to revive an expired Act. The only recent instance is the revival of the Alien Act by the Prevention of Crime (Ireland) Act, 1882 (45 & 46 Vict. c. 25), s. 15. [If an expired Act is revived, Acts passed for the purpose of explaining or amending the expired Act are by implication revived also. Thus, by 29 Geo. 2, c. 28, it was enacted that "2 Geo. 2, c. 22, which was explained and amended by 3 Geo. 2, c. 27, and was further explained and amended and continued by 8 Geo. 2, c. 24, and which by 14 Geo. 2, c. 34, was further continued, and which by 21 Geo. 2, c. 33, was further amended and continued . . . shall be, and the same is hereby, revived, and shall continue and be in force until," &c. In *Williams v. Roughedge* (1759), 2 Burr. 747, the question arose whether the explanatory Acts of 3 Geo. 2, c. 27; 8 Geo. 2, c. 24; 14 Geo. 2, c. 34; and 21 Geo. 2, c. 33, were revived by 29 Geo. 2, c. 28, or whether 2 Geo. 2, c. 22, was alone revived. It was held that the explanatory Acts being all attendant upon the 2 Geo. 2, c. 22, were in effect revived along with it, for (as was said by Foster, J.) "it would be absurd to revive unamended an Act which wanted so many amendments as this Act had received."]

Total repeal of an Act obliterates statute, except as to

5. ["When an [entire] Act of Parliament is repealed" (y), said Lord Tenterden in *Surtees v. Ellison* (1829), 9 B. & C. 752, "it must be considered (except as to transactions past and closed) as if it had never existed. That is the general rule."

(y) As to effect of repealing Acts, *vide also ante*, pp. 288, 296. As to repealing an Act conferring jurisdiction, see *Gurnee v. Patrick* (1890), 137 U. S. 141, 144, Fuller, C.J.

This rule is recognised in sect. 38, sub-sect. 2, of the Interpretation Act, 1889 (z). In order to decide whether any particular transaction is affected by the repeal of an Act, it is necessary to ascertain whether the transaction in question was complete or incomplete at the time the Act was repealed. Thus, if an Act gives a right to do anything, the thing to be done, if only commenced but not completed before the Act is repealed, must upon the repeal of the Act be left *in statu quo*. In *R. v. Mawgan (Inhabitants of)* (1838), 8 A. & E. 496, a presentment as to the non-repair of a highway had been made under 13 Geo. 3, c. 78, s. 24, but before the case came on to be tried, the above-mentioned Act was repealed; consequently no further proceeding could be taken. "If," said Lord Denman, C.J., "the question had related merely to the presentment, that no doubt is complete. But *dum loquimur*, we have lost the power of giving effect to anything that takes place under that proceeding." And Littledale, J., added: "I do not say that what is already done has become bad, but that no more can be done." So, if by virtue of some statute a right becomes vested upon the completion of some certain transaction, *but not before*, no right whatever will have been acquired if the statute in question is repealed before the transaction is complete.] In *Gwynne v. Drewitt*, (1894) 2 Ch. 616, a question arose as to the effect of the repeal in 1856 of a Turnpike Act passed in 1819 for twenty-one years, and subsequently continued till 1856. The Act of 1819 provided for stopping up a bridle-way and vesting the soil in the owner of the land over which it passed, in exchange for land taken for the purposes of a turnpike road to be used in substitution for the bridle-way. Romer, J., said: "The Act of 1856, which repeals the Act of 1819, had not, in my opinion, the effect at all of reviving the old ways which had been stopped up and discontinued. The effect of sect. 51 of the Act of 1819 (59 Geo. 3, c. x.) is this—that the old ways there referred to were stopped up and discontinued, in my judgment, for ever. When the Act of 1856 was passed, and the Act of 1819 repealed, it was not, in my judgment, at all the intention of the Legislature or the effect of the Act of 1856 to undo that which had already been done during the continuance of the prior Act, or to revive these ways which had once for all been discontinued and put an end to as private ways." In *New Windsor Corporation v. Taylor*, (1899) App. Cas. 41, it was held that the repeal of a statute which superseded an ancient franchise to take bridge tolls did not revive the franchise. In *Charrington v. Meatheringham* (1837),

transactions  
past and  
closed.

(z) *Vide ante*, p. 290; and see *Hough v. Windus* (1884), 12 Q. B. D. 224; and *Re Ilfracombe Permanent Mutual Benefit Building Society*, (1901) 1 Ch. 102, where a question arose as to the legal position of a society established and certified under the Building Societies Act, 1836 (6 & 7 Will. 4, c. 32), but never incorporated; and on the repeal of that Act, held to fall within the class of societies forbidden by sect. 4 of the Building Societies Act, 1894 (57 & 58 Vict. c. 47).

2 M. & W. 142, 228, it appeared that by 13 Geo. 3, c. 78, s. 81, any person who brought an action for an illegal distress for rates under the Act, and was non-suited, was liable to pay to the defendant treble costs. The plaintiff in this case had been non-suited, but as judgment was not signed before the repeal of the above-mentioned Act, it was held that the defendant had not acquired a right to the treble costs. But in *Hough v. Windus* (1884), 12 Q. B. D. 224, it was held that when a creditor had obtained a writ of *elegit* after the passing of the Bankruptcy Act, 1883, but before it came into force, and the sheriff had executed the writ before January 1st, 1884, the creditor's rights under the old law were not taken away by the Act of 1883, ss. 146, 169, repealing the statute (13 Edw. 1, c. 18) under which writs of *elegit* issued. [If an offence is punishable under some certain statute, and the statute is repealed after the offence has been committed, but before the trial has taken place and the sentence pronounced, no punishment can be inflicted by virtue of that statute, unless, as the Court said in *Miller's case* (1764), 1 W. Bl. 450; 3 Wils. 420, the repealing Act contained "a special clause to allow it." On this ground it was held in *R. v. M'Kenzie* (1820), R. & R. 429, that if an offence was punishable under some certain statute, and was committed before, but not tried till after, the passing of an Act which repealed that statute, but imposed new penalties for the commission of the offence, the offence was not liable to be punished under either the repealed or the repealing statute (*a*).] In the case of Acts passed after 1889 this presumption has been altered, and unless a contrary intention appears the remedies under the repealed Acts for offences committed before the repeal are not barred (*b*).

46 & 47 Vict.  
c. 52.

Total and  
partial repeal.

[It must be borne in mind that there is a difference in effect between repealing an entire Act and merely repealing a single clause in an Act. It may no doubt be said that, if a clause is repealed, "this clause," as Kelly, C.B., said in *Att.-Gen. v. Lamplough* (1878), 3 Ex. D. 214, 233, "is to be taken as if it had never existed," but it cannot be said that (as Kelly, C.B., added), "where a particular clause in an Act is repealed, the whole Act must be read as if that clause had never been enacted." For every Act of Parliament, as we have already seen (*c*), is in the first instance to be looked at as an entirety, and is to be construed *ex visceribus actūs*. Therefore a Court of law "is entitled," as Bramwell, L.J., said in the last-mentioned case, at p. 227, "to look at the repealed portion of an Act to see what is the meaning of what remains of the Act, otherwise it would follow that an Act of Parliament, which at one time had one meaning,

(*a*) *Vide ante*, p. 338, n. Cf. *Ex parte Grisewood* (1859), 4 De G. & J. 544; 28 L. J. Ch. 769.

(*b*) Interpretation Act, 1889, s. 38, sub-s. 2.

(*c*) *Vide ante*, p. 96, as to construction *ex visceribus actūs*.

would by the repeal of some one clause in it have some other meaning.”]

[If a right has once been acquired by virtue of some statute, it will not be taken away again by the repeal of the statute under which it was acquired. “The law itself,” says Puffendorf, in his “Law of Nature and Nations,” bk. 1, c. 6, s. 6, “may be disannulled by the author, but the right acquired by virtue of that law whilst in force must still remain; for together with a law to take away all its precedent effects would be a high piece of injustice.” Thus, in *Jacques v. Withey* (1788), 1 H. Bl. 65, it appeared that it being illegal, by virtue of 22 Geo. 3, c. 47, to insure tickets in a lottery, a contract for insuring lottery tickets was void, and that, consequently, any money which had been paid in pursuance of such a contract might be recovered back. After a contract of this kind had been entered into, and after money had been paid by the plaintiff to the defendant in pursuance of it, the Act 22 Geo. 3, c. 47, was repealed; consequently, it was argued that, as such contracts were no longer illegal, the money which had been paid before the repeal of the Act could not be recovered back in an action which had not been commenced until after the repeal of the Act. It was held, however, that a contract which was void by statute when made, could not be set up again by the repeal of the statute between the time of contracting and the commencement of the suit. “If,” said Coleridge, J., in commenting on the case in *Hitchcock v. Way* (1837), 6 A. & E. 943, 947, “it had been originally a good contract, and a statute had passed which had made it void, and then that statute had been repealed, the contract would have been set up again. But here there was *originally a void contract* by virtue of a statute, and therefore it cannot be made valid by the repeal of that statute” (d).]

Rights acquired by virtue of statute are not lost by repeal of statute.

[While a right acquired by virtue of a statute is not taken away by the repeal of that statute, it is not augmented by the repeal. Thus, in *Butcher v. Henderson* (1868), L. R. 3 Q. B. 335, the plaintiff obtained a verdict for 40s., but by virtue of 13 & 14 Vict. c. 61, s. 11, a plaintiff who obtained a verdict for less than 5*l.* was deprived of his right to costs under the Statute of Gloucester (6 Ed. 1, c. 1, rep.). But before the plaintiff had signed judgment the section was repealed. Consequently, the plaintiff argued that his right to costs under the Statute of Gloucester revived, and that upon signing judgment he became entitled to costs. It was held, however, that the plaintiff had become entitled under the then existing statute to a certain definite right, namely, to a verdict for 40s. *and no costs*, and that, the transaction being then complete, no alteration in the nature of his right could be effected by the subsequent

Neither can such a right be augmented.

(d) *Vide ante*, p. 126, as to reference, for purposes of construction, to repealed Acts *in pari materia*.

repeal of the statute under which that right had been acquired. Sometimes when an Act is repealed it is expressly enacted in the repealing Act that "this repeal shall not affect any right or liability acquired, accrued, or incurred." But as the rule of law is as above stated, such a clause as this is apparently unnecessary, and only inserted *ex abundanti cautela*;] and this is now the general canon of construction as to repeals made after 1889 (52 & 53 Vict. c. 63, s. 38, sub-s. 2, *ante*, p. 290).

Repeal *ex  
abundanti  
cautelâ.*

46 & 47 Vict.  
c. 52.

Express repeals are in some cases inserted *ex abundanti cautela*, and to confirm and corroborate the effect of enactments contained in the repealing Act or some prior statute upon the enactment expressly repealed. Thus, in *Hough v. Windus* (1884), 12 Q. B. D. 224, it was held that sect. 146 of the Bankruptcy Act, 1883, repealed the Statute of Westminster the Second (13 Edw. 1, c. 18) as to writs of *elegit*, and that sect. 169, the repeal section, must be read with sect. 146, and that, consequently, the savings in sect. 169 did not operate to cut down the extent of the repeal effected by sect. 146 so far as related to the rights of creditors who had obtained writs of *elegit* between the passing and the commencement of the Act of 1883. Savings from a repealing clause do not apply to any express antecedent provision inconsistent with them (*e*), and it cannot, therefore, now be argued that the repeal clause can in any way control or be otherwise than subsidiary to the statute to which it is attached (*f*).

Effect of proviso "except as to acts done under repealed Act."

[If an Act is repealed with a proviso, "except as to acts done under it," this proviso will receive a liberal interpretation, and will be extended to any act which a person *bona fide* believes he was entitled to do under and by virtue of the repealed statute, even though it eventually appears that he acted wrongly. Thus, the County Courts Act, 1846 (9 & 10 Vict. c. 95), enacted, in sect. 139, that no costs should be awarded to the plaintiff in any action against a County Court bailiff in respect of any grievance committed "by him under colour of the process of the Court," unless the plaintiff recovered more than 20*l.* damages or the judge certified. This section was repealed by 19 & 20 Vict. c. 108, s. 2, "except as to acts done under it." In *Foster v. Pritchard* (1857), 26 L. J. Ex. 215, it was contended with respect to an action tried after the passing of 19 & 20 Vict. c. 108, in which the plaintiff recovered less than 20*l.* damages and the judge did not certify, that the grievance committed by the defendant under colour of the process of the Court was not "an act done under" this repealed section. But, said the Court, "there can be no doubt that it was the intention of the Legislature that the words in this proviso as to 'acts done under' the repealed statutes should be construed in an

(*e*) *Hough v. Windus* (1884), 12 Q. B. D. 231, Selborne, L.C.

(*f*) *Loc. cit.* p. 235, Bowen, L.J.



extensive sense. . . . The words 'done under' may mean 'done while a statute is in operation.' The words 'under and subject to' would, it must be admitted, have rendered this construction indisputable, and, under the circumstances, we think that the word 'under' should have this meaning."]

[Sometimes an Act of Parliament, instead of expressly repeating the words of a section contained in a former Act, merely refers to it, and by relation applies its provisions to some new state of things created by the subsequent Act (*g*).] In such a case the "rule of construction is," said Brett, L.J., in *Clarke v. Bradlaugh* (1881), 8 Q. B. D. 63, 69, "that where a statute is incorporated by reference into a second statute, the repeal of the first statute by a third does not affect the second." [This was first expressly decided in *R. v. Merionethshire* (1844), 6 Q. B. 343. In that case it appeared that 43 Geo. 3, c. 59, s. 1, enacts that the surveyor of bridges may take materials for the repair of bridges in the same manner as the surveyors of highways are authorised to take materials by 13 Geo. 3, c. 78 (*h*), and that "the several powers thereby vested in the surveyor of highways shall be, and the same are hereby, vested in the surveyor of bridges . . . as fully and effectually as if the same and every part thereof were herein repeated and re-enacted." 13 Geo. 3, c. 78, was repealed by 5 & 6 Will. 4, c. 50, s. 1, and the question arose as to what effect the repeal of the former Act had on the above-mentioned provisions of the latter Act. Lord Denman, C.J., in giving judgment, said as follows as to this: "There is certainly a difficulty. . . . The question is whether 43 Geo. 3, c. 59, which is unrepealed, does not keep alive the power given by 13 Geo. 3, c. 78, s. 64. And I think it must be taken to do so." And Williams, J., added: "It is impossible to say that this question is without doubt. . . . It certainly appears strange that when an Act of Parliament is *per se* abolished, it shall virtually have effect through another Act. But any difficulty which that may raise is met by the manner in which the earlier Act is introduced in 43 Geo. 3, c. 59, 'as if the same . . . were herein repeated and re-enacted.' To save the trouble of incorporating it in terms they do so by relation, but the provisions are made part of 43 Geo. 3, c. 59, as much as if they were expressly incorporated." The doubts expressed by the Court in this case do not appear to have been felt in subse-

Provisions of prior Act adopted by relation by subsequent Act are not repealed by repeal of prior Act.

(*g*) 31 & 32 Vict. c. 50, applies the provisions of 28 & 29 Vict. c. 84; this latter Act is repealed by 40 & 41 Vict. c. 53, s. 72, but was printed in the Supplement to vol. xv. of the Revised Statutes (1st ed.) as being still in force through 31 & 32 Vict. c. 50. It is omitted from the second Revised edition of the Statutes.

(*h*) [This Act was omitted from its proper place in the Revised edition of the Statutes, but in consequence apparently of the decision in *R. v. Smith* (1873), L. R. 8 Q. B. 146 (cited below, p. 346), it was printed in the Appendix to vol. iv. of the Revised Statutes (1st ed.).] It is omitted from the second Revised edition of the Statutes.

quent cases (*i*) where the same question arose. Thus, in *R. v. Smith* (1873), L. R. 8 Q. B. 146, it appeared that the 32 & 33 Vict. c. 27, s. 8, enacts that "all the provisions of 9 Geo. 4, c. 61, as to appeal to quarter sessions from any act of any justice, shall have effect with respect to the grant of certificates under this Act." By 35 & 36 Vict. c. 94, s. 75, all the provisions of 9 Geo. 4, c. 61, as to appeal to quarter sessions are repealed, but the principle laid down in *R. v. Merionethshire* was not attempted to be disputed, and the only question raised was as to whether the form of words used in 32 & 33 Vict. c. 27, did actually incorporate the provisions of 9 Geo. 4, c. 61. In giving judgment, the Court adopted without any hesitation the principle laid down in *R. v. Merionethshire* (*ubi supra*). "I agree," said Blackburn, J., "that the authorities (*k*) show that the repeal of the original Act does not of itself repeal provisions as incorporated in a subsequent Act, and without authorities it is but common sense that, where a second Act in effect re-enacts an older Act, the second Act must be expressly repealed as well as the older Act, otherwise it must be taken to remain in force." And Cockburn, C.J., also expressed himself to the same effect, and then added: "The difficulty here arises from the usual form of incorporation having been departed from, but I think the form used does constructively, though not expressly, say that the appeal sections shall be incorporated." Lord Cairns' Act (21 & 22 Vict. c. 27) has been repealed by 46 & 47 Vict. c. 49, s. 3, but the repeal was not intended to take away any of the powers given by the Act in a Chancery action, but because it was considered that the Judicature Acts re-enacted these powers, and therefore that Lord Cairns' Act had become obsolete and might be repealed (*l*).

A repealed Act may be revived by express enactment.

[Although an Act of Parliament, after it has been repealed, must "be considered as if it had never existed" (*m*), this rule does not prevent its being revived. Until 1850 the rule adopted with regard to the revival of repealed Acts of Parliament was that laid down by Lord Coke, 2 Inst. 686, viz., that "as by the repealing of a repeal the first Act is revived, so by reviving of an Act repealed the Act of repeal is made of no force." But the present rule, established by 13 & 14 Vict. c. 21, s. 5, and now contained in sect. 11, sub-s. 1, of the Interpretation Act, 1889, is that "where an Act passed after the year 1850, whether before or after the commencement of this Act (January 1, 1890), repeals a repealing enactment, it shall not be construed as reviving any enactment previously repealed

(*i*) See *R. v. Brecon* (1849), 15 Q. B. 813; *R. v. Stepney Union* (1874), L. R. 9 Q. B. 383, 390; *Clarke v. Bradlaugh* (1881), 8 Q. B. D. 63, 69, Brett, L.J.

(*k*) *E.g.*, *R. v. Stock* (1838), 8 A. & E. 405, 409, 410.

(*l*) *Chapman v. Auckland Guardians* (1889), 23 Q. B. D. 294, 299, Esher, M.R.

(*m*) *Ante*, p. 340.

unless words are added reviving that enactment." Consequently, no Act, which has once been repealed, has been revived, except by express enactment.] For instance, 55 Geo. 3, c. 91, was repealed by the Statute Law Revision Act, 1873 (36 & 37 Vict. c. 91), and revived by the Statute Law Revision Act, 1874 (37 & 38 Vict. c. 35), s. 2; and 6 & 7 Vict. c. 79 was repealed by 31 & 32 Vict. c. 45, revived in part by 40 & 41 Vict. c. 42, and again repealed in part by 46 & 47 Vict. c. 22.

[The object of the enactment of 13 & 14 Vict. c. 21, s. 5, was, as Hannen, J., pointed out in *Mirfin v. Attwood* (1869), L. R. 4 Q. B. 330, 340, "to prevent the revival of a statute contrary to the intention of the Legislature," and it apparently applies to cases of implied repeal as well as where a statute is repealed by express enactment.]

Effect of  
Brougham's  
Act, s. 5.

[If the Act which repeals a prior Act is itself only a temporary Act, the general rule is that the prior law is revived after the temporary Act is spent;] and inasmuch as *ex hypothesi* the temporary Act expires and is not repealed, the rules of construction laid down by sects. 11 (1), 38 (2) of the Interpretation Act, 1889 (*n*), do not apply. [But there will be no revivor if it was clearly the intention of the Legislature to repeal the prior Act absolutely. Thus, in *Warren v. Windle* (1803), 3 East, 205, it was argued that the temporary Act of 26 Geo. 3, c. 108, which repealed 19 Geo. 2, c. 35, having itself expired, 19 Geo. 2, c. 35, revived; but, said Lord Ellenborough, "that would not necessarily follow, for a law, though temporary in some of its provisions, may have a permanent operation in other respects. 26 Geo. 3, c. 108, professes to repeal 19 Geo. 2, c. 35, absolutely, though its own provisions, which it substituted in the place of it, were to be only temporary." This view was adopted by Collins, L.J., in *New Windsor Corporation v. Taylor*, (1898) 1 Q. B. 186, 205, where one of the questions for determination was whether an Act of 1734, extinguishing a franchise then existing by prescription, was absolutely or only temporarily repealed by a temporary Act of 1819, which, after divers continuances, was allowed to expire in 1867. And his opinion appears to have been adopted by Lord Davey in the same case in the House of Lords, (1898) App. Cas. 41, 50 (*o*). [But when it was argued in *R. v. Rogers* (1809), 10 East, 573, that certain parts of 42 Geo. 3, c. 38, having been repealed by the temporary Act of 46 Geo. 3, c. 139, did not revive upon the expiration of the temporary Act, Lord Ellenborough said as follows: "It is a question of construction upon every Act professing to repeal or interfere with the provisions of a former law, whether it operate as a total or partial and temporary repeal. Here the

Repeal by a  
temporary  
Act may be  
absolute or  
temporary.

(*n*) See pp. 290, 291.

(*o*) Cf. *Lauri v. Renad*, (1892) 3 Ch. 402, 420, Lindley, L.J.

question is whether the provisions of 42 Geo. 3, c. 38, which was originally perpetual, be entirely repealed by the 46 Geo. 3, c. 139, or only repealed for a limited time. The last Act recites, indeed, that certain provisions of the former one should be repealed, but this word is not to be taken in an absolute sense, if it appear upon the whole Act to be used in a limited sense.”]

## CHAPTER VII.

## EFFECT OF STATUTES ON THE CROWN.

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1. REFERENCES in a statute to the Sovereign reigning at the time of its passing, or to the Crown, are, unless a contrary intention appears, to be read as references to the Sovereign for the time being (*a*). Consequently, the statutory rights and obligations of the Crown do not cease upon its demise (*b*). The Commissioners of Works do not represent the Crown (*c*), nor does the Corporation of the Trinity House in the exercise of its functions under the Merchant Shipping Acts (*d*). But the Postmaster-General represents the Crown (*e*), and the same rule seems to apply to all heads of the chief departments of State (*f*). References to the Crown.

(*a*) Interpretation Act, 1889 (52 & 53 Vict. c. 63), s. 30. The enactment is by the same section expressly made binding on the Crown.

(*b*) The earlier statutes do not seem to have been regarded as binding the successors of the Sovereign in whose reign they were passed, and appointments made by a Sovereign determined on his death. See the Act of Settlement (12 & 13 Will. 3, c. 2), s. 3.

(*c*) *Re Wood's Estate* (1886), 31 Ch. D. 607. They are incorporated, and may be sued: *Graham v. Commissioners of Works*, (1901) 2 K. B. 781.

(*d*) *Gilbert v. Trinity House* (1886), 17 Q. B. D. 795.

(*e*) *Re West London Commercial Bank* (1888), 38 Ch. D. 364.

(*f*) See *Dunn v. Macdonald*, (1897) 1 Q. B. 555, and *Gidley v. Lord Palmerston* (1822), 1 St. Tr. N.S. 1263, and cases cited and noted at p. 1271.

30 & 31 Vict.  
c. 3.

Statutes  
made for  
benefit of  
Crown.

The expression "the Crown," even in a British statute, is not confined to the prerogative as exercisable in England. The Crown rights as to debts due to a colonial Government are equally within the rule, and in *Re Oriental Bank Corporation* (1885), 28 Ch. D. 634, the priority of Crown debts was successfully asserted with reference to balances left by a colonial Government in the liquidating bank; and in *Liquidators of Maritime Bank of Canada v. Receiver-General of New Brunswick*, (1892) App. Cas. 437, it was held that the British North America Act, 1867, did not sever the connection between the Crown and the Provinces of Canada, nor take away the prerogative of the Crown as to the priority of Crown debts due to the provincial government, nor reduce the provinces to the rank of municipal institutions (*g*).

2. [In *Reniger v. Fogossa* (1549), Plowd. 10, it is said that "a statute made for the benefit of the King shall be construed most beneficially for him." The reason of this rule is explained by Plowden as being that all statutes are made by the King's subjects, and that, if a statute is made for the benefit of the King, the makers, that is, the King's subjects, are in the position of grantors or donors, and the King is in the position of a grantee or donee. Now, the general common law rule with regard to grants or gifts is that they shall be construed most strongly against the grantors and most beneficially for the grantee; "and if," continues Plowden, "it be so where a common person is grantee or donee, *à multo fortiori* where the King is grantee, therefore a statute whereby anything is given to the King must be construed most beneficially for the King." This rule, though cited in Comyns' Digest (tit. Parliament, R. 21) as well recognised with regard to the effect of statutes, has rarely been adopted in reported cases (*h*). In *R. v. Treasury* (1851), 20 L. J. Q. B. 312, a question arose with regard to the construction of 1 & 2 Will. 4, c. 11, by which an annuity was granted to Queen Adelaide. After disposing of various other arguments, the Court said: "Finally, reliance is placed on the exalted rank of Her Majesty. We are at a loss to know how this should influence the construction of the language by which provision is made for her; we might as well be told of her exemplary virtues while living, and of her saint-like death, which will ever make her memory cherished with affection and reverence by the English nation; these we are most ready to acknow-

(*g*) In some provinces, *e.g.*, Quebec, the Crown right is limited. See *Exchange Bank of Canada v. ...* 11 App. Cas. 157.

(*h*) [See *Bishop v. Lord Winchester* (1835), 4 Cl. & F. 445, at p. 484, where the rule as laid down in Comyns' Digest was prayed in aid by Sir Fred. Pollock *arguendo*; and the *Bloomfield Peerage claim* (1831) (6 Eng. Rep. 344; 2 Dow & Cl. 344, 346), where the Lord Chancellor (Brougham) says: "All grants to which the Crown was a party are to be construed in favour of the Crown." In the old grants of patents it was usual to insert a provision that they should be construed in favour of the patentee.]

ledge, but we sit here merely as judges to interpret an Act of Parliament.”] But this opinion is no denial of the existence of the rule, inasmuch as the Queen Consort is clearly not entitled to the constitutional prerogatives of the Crown (i).

3. The history of legislation is to a large extent a history of the restriction of the royal prerogative (k), but “it is a well-established rule, generally speaking, in the construction of Acts of Parliament, that the King is not included unless there are words to that effect; for it is inferred *prima facie* that the law made by the Crown, with the assent of the Lords and Commons, is made for subjects, and not for the Crown” (l). “This general rule, as expressed in Bacon’s Abridgment [7th ed. p. 462], is that, ‘where a statute is general, and thereby any prerogative, right, title, or interest is divested or taken from the King, in such case the King shall not be bound, unless the statute is made by express terms to extend to him’” (m). As regards Australia, the rule was thus expressed in *Roberts v. Ahern* (1904), 1 Australia C. L. R. 406, as meaning that the Executive Government of the Australian Commonwealth or of a constituent State thereof, is not bound by a statute unless the intention that it shall be bound is apparent (n). The same doctrine is accepted in the United States (o). The rule is analogous, if not equivalent, to the rule already stated (p), that the common law is not presumed to be altered by statute, for the rights and titles and prerogatives of the Crown are in reality part of the common law of England. The reason of the rule is thus put by Plowden, 240: “Because it is not an Act without the King’s assent, and it is to be intended that when the King gives his assent he does not mean to prejudice himself or to bar himself of his liberty and his privilege, but he assents that it shall be a law among his subjects.” One particular application of this rule is to be found in decisions that high officers of the Crown, acting under the statutes relating to the post office and electric telegraphs, may not be sued for negligence in the exercise of powers

The Crown is not bound by statute unless specially named.

(i) Queen Natalie of Serbia was denied in Germany the immunities of a Sovereign, as she was only a Queen Consort.

(k) Older statutes contain express savings of the prerogative. See Chitty, Prerogative, 383.

(l) *Att.-Gen. v. Donaldson* (1842), 10 M. & W. 117, 123, Alderson, B.; and see *Willon v. Berkley* (1560), Plowd. at p. 240; *Théberge v. Laundry* (1876), 2 App. Cas. 102; *Cushing v. Dupuy* (1880), 5 App. Cas. 410, 419.

(m) See *Ex parte Postmaster-General* (1879), 10 Ch. D. 462, Jessel, M.R.; *Wheaton v. Maple*, (1893) 3 Ch. 48, 64, Lindley, L.J.

(n) See at p. 417, per Griffith, L.J. Acting upon this rule, the High Court of Australia decided that sect. 5 of the Police Offences Act, 1890 (Victoria), did not affect the Government of that State, and does not affect the Commonwealth Government or its agencies in the management of departments transferred from the State to the Commonwealth. This meant in this particular case that a contractor for carting night soil from a Commonwealth post office was exempt from control by the local sanitary authority.

(o) *U. S. v. Hoar* (1821), 2 Mason, U. S. Cir. Ct. 311, 314, Story, J.; *Endlich on Statutes* (1888), p. 223.

(p) *Ante*, p. 279.

given by such Acts. Thus, in *Bainbridge v. Postmaster-General*, (1906) 1 K. B. 178, it was held by the Court that the Postmaster-General was not liable in his official capacity as head of the telegraph department for wrongful acts of his subordinates in carrying on the business of the department (*q*).

In *Hornsey U. D. C. v. Hennell*, (1902) 2 K. B. 73, it was held that the Crown, not being named in sect. 150 of the Public Health Act, 1875 (38 & 39 Vict. c. 55), was not liable to pay paving expenses incurred in respect to a street on which abuts property in the occupation of the Crown (*r*). In *Cooper v. Hawkins*, (1904) 2 K. B. 164, the Locomotives Act, 1865 (28 & 29 Vict. c. 65), was held not to apply to a locomotive driven by a servant of the Crown on Crown service, because the Crown was not expressly named (*s*).

Meaning of  
expression  
"right of  
Crown not  
being  
barred."

[Saying that the rights of the Crown are not barred by any statute which does not name them, does *not* mean that the King, looked upon as a mere individual, may not be in certain cases deprived by statutes, which do not specially name him, "of such inferior rights as belong indifferently to the King or to a subject, such as the title to an advowson or a landed estate"; what it does mean is that the King cannot in any case whatever be stripped by a statute, which does not specially name him, "of any part of his ancient prerogative, or of those rights which are incommunicable and are appropriated to him as essential to his regal capacity" (*t*). In the *Magdalen College case* (1616), 11 Co. Rep. 68 *b*, Coke says that it was resolved "that where the King has any prerogative, estate, right, title or interest by the general words of an Act he shall not be barred of them." The question there raised was whether the King, not being specially named in 13 Eliz. c. 10, was bound by it. By that statute it was enacted that "all leases, grants, or conveyances to be made by any master and fellows of any college . . . of any houses, lands . . . to any person or persons, bodies politic or corporate, for a longer term than twenty-one years, shall be utterly void," and it was contended by the plaintiff that this statute did not extend to the King so as to make void a lease made to Queen Elizabeth by Magdalen College for a longer term than twenty-one years. In support of his argument the plaintiff prayed in aid various cases in

(*q*) See also the other decisions there cited. In some of the colonies a statutory liability is imposed in similar cases on the head of a department or an officer nominated to represent the Crown. See *Farnell v. Bowman* (1887), 12 App. Cas. 643 (N. S. W.); *Att.-Gen., &c. v. Wemyss* (1888), 13 App. Cas. 192 (Straits Settlements).

(*r*) In this case many of the prior authorities are collected. Doubt is thrown on *Westminster Vestry v. Hopkins*, (1899) 2 Q. B. 474, with respect to the enforcement of Health Acts on Crown premises.

(*s*) The Act was declared applicable to servants of the Crown by the Motor Car Act, 1903 (3 Edw. 7, c. 36), s. 16. As to prisons, see *Gorton L. B. v. Prison Commissioners* (1887), reported, (1904) 1 K. B. 165, *n*.

(*t*) See Dr. Woodeson's *Vinerian Lectures*, vol. i. p. 31.



which it had been held that the King was not bound by statutes unless named in them. Thus, by the Statute of Westminster the Second (13 Edw. 1), c. 36, which settles reasonable aid (as well to make the eldest son knight as to marry the eldest daughter) in certain (*sic*), it was enacted that from henceforth of a whole knight's fee there should be given only 20s. and of 20l. land held in socage 20s., and of more, more, and of less, less; but it was held, that forasmuch as the King was not named, he was not bound by the law, and to settle that in certainty was passed the 25 Edw. 3 (stat. 5), c. 11, in which Act the King was specially named. Also the King hath a prerogative *quod nullum tempus occurrit regi*, and therefore the general Acts of limitations or of plenarty shall not extend to him (*u*). Lord Coke also says: "Many other cases were cited upon this large and common ground which you may find in our books, and especially in Plowden's Comm., *Willion v. Berkley* (1560), at p. 240." The cases cited by Plowden bear out the proposition above stated, namely, that where the King has any "prerogatives, estate, right, title, or interest, which are incommunicable and appropriated to him as essential to his regal capacity," he shall not be barred to them by the general words of an Act of Parliament.]

In *Perry v. Eames*, (1891) 1 Ch. 657, the rule was thus stated by Chitty, J. (p. 665), speaking of the Prescription Act: "The Crown is not named in that section, but is named in the 2nd and 3rd sections. Therefore, regard being had to the general rule that the Crown is not bound by a statute unless named, a very strong case arises for holding that the Crown is not bound by the 3rd section. It was, however, argued for the plaintiffs that the Crown is bound by necessary implication, because the servient tenement is not mentioned in the 3rd section. . . . But it appears to me a wholly immaterial circumstance whether the servient tenement is mentioned or not. It is not a circumstance from which any intention on the part of the Crown can be inferred, much less is it sufficient to raise a necessary implication, or to support an irresistible inference of intention to bind the Crown." And he proceeded to lay down a further rule of great importance in modern times, where the functions of the Crown are put into commission: "It was contended that although the section [3] might not apply where the legal estate was vested in the Crown, it does apply where the legal estate is held by subjects in trust for the Crown (*x*). In support of this contention various authorities were cited for the plaintiffs, but none of them really touched the point. One of them was *Sharp v. St. Sauveur* (*y*). All that was there decided was that the Crown

2 & 3 Will. 4,  
c. 71.

Equitable  
rights of the  
Crown.

(*u*) See *Att.-Gen. v. Emerson*, (1891) A. C. 649, in which the Crown claimed part of the Maplin Sands, which had been in the possession of subjects for at least five centuries.

(*x*) Approved, *Wheaton v. Maple*, (1893) 3 Ch. 48, 64, 65, Lindley, L.J.

(*y*) (1872), 7 Ch. App. 343.

33 & 34 Vict.  
c. 14.

43 Eliz. c. 2.

Penalties or  
forfeitures.  
41 & 42 Vict.  
c. 49.

could enforce in the Court of Chancery a trust of land created for an alien prior to the Naturalisation Act, 1870. That has no bearing on the case before me. In ancient times it was not the practice to vest the legal estates in trustees for the Crown, and thus there is little or no direct ancient authority on the point. The second resolution in the *Magdalen College case* (z) appears, however, to be large enough to cover it. It was resolved that where the King has any prerogative, right, title, or interest, he shall not be barred of them by the general words of an Act of Parliament. There is no reason for confining this resolution to mere legal interests, or for excluding an absolute beneficial ownership in the Crown." In *Jones v. Mersey Docks* (1864), 11 H. L. C. 443, a case as to the liability of the Mersey Docks to be rated to the poor under the statute of Elizabeth, Lord Cranworth stated the law as to the exemption of the Crown in the following passage (at p. 508): "The Crown, not being named, is not bound by the Act. It follows, therefore, that lands or houses occupied by the Crown, or by servants of the Crown for the purposes of the Crown, are not liable to be rated; and I conceive that it is from a confusion between property occupied for public purposes and property occupied by servants of the Crown that this mistake has arisen. This principle exempts from rates, not only royal palaces, but also the offices of the Secretaries of State, the Horse Guards, the Post Office, and many similar buildings. On the same ground police-courts, county courts, and even county buildings occupied as lodgings at the assizes have been held exempt. These decisions, however, have all gone on ground more or less sound, that these might all be treated as buildings occupied by servants of the Crown (a), and for the Crown, extending in some instances the shield of the Crown to what might more fully be described as the public government of the country." And after referring to *R. v. McCann* (1868), L. R. 3 Q. B. 144, as placing a trustee for the Crown in the same position as a servant of the Crown, Chitty, J., added (*loc. cit.* p. 669): "Now, in the cases before me, the Crown's absolute beneficial ownership for the purposes of the Act is expressly manifested by a public statute, and it is obvious that the legal estate was vested in trustees merely for the purposes of more convenient administration by a department of the Queen's Government. I am of opinion, then, that the prerogative of the Crown takes these cases out of the operation of the 3rd section."

An Act creating a forfeiture does not bind the Crown (b). Thus, in *R. v. Kent Justices* (1890), 24 Q. B. D. 181, it was decided that the Weights and Measures Act, 1878, did not apply to Post Office weights, as to hold so would involve a

(z) (1616), 11 Co. Rep. 74 b.

(a) *Coomber v. Berks Justices* (1883), 9 App. Cas. 71.

(b) See *Cooper v. Hawkins*. (1904) 2 K. B. 164: *ante*, p. 352.

forfeiture of Crown property. All statutory fines and forfeitures belong to the Crown unless otherwise provided by the Act creating them. Where a penalty is created by statute, and nothing is said as to who may recover it, and the offence is not against an individual, it belongs to the Crown, and consequently a common informer cannot sue on a penal statute unless an interest in the penalty is given to him by express words or necessary implication (c).

The Crown receives and does not pay duties and taxes. But in the Stamp Act, 1891 (d), provision is made for the imposition of stamp duty on instruments relating to property belonging to the Crown or being the private property of the Sovereign in the same manner as on property of subjects, unless a contrary intention is expressed. The effect of this provision is to alter the common law presumption as to the exemption of the Crown from the provisions of a statute so far as relates to stamp duties on instruments. [In *R. v. Cook* (1789), 3 T. R. 519, the question arose whether 25 Geo. 3, c. 51, s. 4, enacting that there should be charged a duty of 1½*d.* per mile upon every horse hired to travel post, made this duty payable by a person carrying despatches for the Government. Lord Kenyon, in deciding that this Act did not bind the King, said: "Generally speaking, in the construction of Acts of Parliament the King in his royal character is not included unless there be words to that effect. . . . Although there is no special exemption of the King in this Act, yet I am of opinion that he is exempted by virtue of his prerogative in the same manner as he is virtually exempted from the 43rd Eliz. and every other Act imposing a duty or tax upon the subjects."]

Duties and taxes.

Light dues.

In *Smithett v. Blythe* (1830), 1 B. & Ad. 509, on a claim for light dues against the Crown, it was held that the claim was not maintainable as to post packet ships owned by the Crown, and it was said that the express exemption (in the statute authorising the taking of the dues) of the King's ships of war raised no implication that the general right to take charges granted by the Act extended to other vessels owned by the Crown (e).

Tolls and dues.

[In *Mayor of Weymouth v. Nugent* (1865), 6 B. & S. 22, the question was whether stone brought into the harbour of Weymouth for the use of Government works was exempt from wharfage duty chargeable by a private Act upon all goods brought into the harbour. It was contended that the Crown, not having been expressly exempted, was liable to pay this wharfage. But it was held that, as immunity from all tolls of

(c) *Bradlaugh v. Clarke* (1883), 8 App. Cas. 354. As to Penal Acts, see Part III. *infra*.

(d) 54 & 55 Vict. c. 39, s. 119.

(e) *Trinity House v. Clarke* (1815), 4 M. & S. 288. In India some controversy has arisen whether a local legislature can affect the prerogative of the Crown: *Bell v. Madras City Commissioners* (1901), 25 Madras, 457.

any kind is a prerogative right of the Crown, if the Crown was to be held liable by implication to pay wharfage duty a prerogative of the Crown would be directly affected, and the well-established rule that the Crown was not bound by an Act of Parliament, unless named in the Act, would be broken through (*f*).]

Rates.

[It is also a prerogative right of the Crown not to pay rates, and it has always been held that the Crown, not being named in 43 Eliz. c. 2, is not liable to be rated for the relief of the poor. The later decisions on this subject have greatly extended the meaning of the expression "in the occupation of the Crown." At the present time, not only is all property in the occupation of the Crown not rateable, but also where property is occupied for the Crown it is not to be rated (*g*).] Lord Blackburn, in *Coomber v. Berks Justices* (1883), 9 App. Cas. 61, at p. 71, thus stated the general rule: "It seems to me that it is not material whether the assessment statute imposing any tax does so, like the Poor Rate Acts, for a local purpose, or like the statute imposing a duty on post-horses, considered in *R. v. Cook* (1789), 3 T. R. 519, or the income-tax, for an imperial purpose. In each there is an implied exemption on the ground of prerogative. And if the property is so held as to bring it within the ground of exemption from the one statute, it must surely be brought within the ground of exemption from the other." And Lord Watson said (at p. 77): "The existence of the same kind and degree of interest on the part of the Crown which is deemed in law sufficient to protect an occupier from liability to the poor-rate must also be held sufficient to shield the owner of the bare legal estate against any demand for payment of income-tax. The judgment of a Court of law to the effect that certain public purposes are such as are required and created by the Government of the country, and must therefore be deemed part of the use and service of the Crown, is a decision resting upon grounds altogether outside and independent of the provisions of the Act of Elizabeth, and, so far as I know, of any other taxing Act to be found in the Statute-book. I therefore think that the cases in which it has been decided that the actual occupiers of assize courts and police stations are exempt from poor-rate as being within the privilege of the Crown are decisions of an equal authority in a question as to exemption from income-tax" (*h*).

The question then arises, What property falls within this conceded exemption? The rule laid down in *R. v. Cook* (*i*) as to tolls has been held also to apply to local rates, but controversy has raged round the question, What is Crown property within the rule? The leading case on this subject is *Jones v. Mersey*

(*f*) See also *Northam Bridge Co. v. R.* (1886), 55 L. T. 759.

(*g*) See Ryde on Rating (2nd ed.), pp. 88—102.

(*h*) Lord Bramwell agreed, *loc. cit.* p. 79.

(*i*) (1789), 3 T. R. 519.

*Docks* (*k*), where Lord Westbury laid it down that public purposes to make an exemption "must be such as are required and created by the Government of the country, and are therefore to be deemed part of the use and service of the Crown" (*l*). The rule is also laid down by Lord Cairns in substantially the same terms in *Greig v. University of Edinburgh* (1868), L. R. 1 H. L. (Sc.) 348, 350: "The Crown not being named in the English or Scotch statutes on the subject of assessment, and not being bound by statute when not expressly named, any property which is in the occupation of the Crown, or of persons using it exclusively in or for the service of the Crown, is not rateable to the relief of the poor." Buildings occupied for volunteer corps have been held to be used solely for the military service of the Crown, and to be exempt from rates (*m*) and from contribution to the expense of paving streets upon which they abut (*n*); and from Building Acts (*o*).

[It is also a prerogative right of the Crown not to pay costs Costs. in any judicial proceeding, and it was held in *R. v. Beadle* (1857), 26 L. J. M. C. 111, that there was no power to award costs against the Crown except in those cases in which it was expressly authorised by Act of Parliament (*p*). "I do not believe," said Lord Campbell, C.J., in giving judgment, "that it was the intention of the framers of the Act to embrace cases of this sort, but it is enough for us to say that the Crown is not expressly mentioned in this Act, and cannot therefore be bound."] This does not affect the right of the Crown to receive costs (*q*). The words of sect. 6 of the Statute Law Revision Act, 1881 (44 & 45 Vict. c. 59), are *prima facie* wide enough to include power to make provision by Rules of Court for costs in "proceedings by or against the Crown" (*r*).

[So, also, it being a prerogative right of the Crown to plead Pleading. double or plead and demur in a petition of right without the leave of the Court, it was held in *Tobin v. R.* (1863), 32 L. J. C. P. 216, that that right, not being in express terms taken away by 23 & 24 Vict. c. 34, remained the same as it was before the passing of that Act.]

Debts due to the Crown or to its agents take priority over Crown debts. debts due to subjects, even in bankruptcy, unless there is

(*k*) (1865), 11 H. L. C. 443. *S. C.*, *Cameron v. Mersey Docks*.

(*l*) See also *Ferry v. Eames*, (1891) 1 Ch. 658, 668.

(*m*) *Pearson v. Holborn Union Assessment Committee*, (1893) 1 Q. B. 389.

(*n*) *Hornsey U. D. C. v. Hennell*, (1902) 2 K. B. 73, which doubts the case of *Westminster Vestry v. Hoskins*, (1899) 2 Q. B. 474; *cf. Lord Advocate v. Lang* (1866), 5 Rettie, 84.

(*o*) *Jay v. Hammon* (1857), 27 L. J. M. C. 25.

(*p*) 20 & 21 Vict. c. 43, ss. 4, 6; *Moore v. Smith* (1859), 28 L. J. M. C. 126. and 19 & 20 Vict. c. 56, s. 24; *Alexander v. Officers of State for Scotland* (1868), L. R. 1 H. L. (Sc.) 276; *R. v. Archbishop of Canterbury*, (1902) 2 K. B. 503, 571.

(*q*) *Moore v. Smith* (1859), 1 E. & E. 597. But see *R. v. Archbishop of Canterbury*, (1902) 2 K. B. 503, 571.

(*r*) *R. v. Archbishop of Canterbury*, (1902) 2 K. B. 503, 573, Wright, J.; and see *Re Mills' Estate* (1886), 34 Ch. D. 24.

express statutory provision to the contrary (*s*). This provision applies even if the debt is due to the Crown in respect of a colonial Government (*t*) or the Post Office (*u*). And in *Re Oriental Bank Corporation* (1884), 28 Ch. D. 634, it was decided that although the Bankruptcy Act, 1883, took away the priority of the Crown over other creditors in the distribution of assets, and the Judicature Act, 1875, s. 10, had directed the assimilation of liquidation and bankruptcy procedure and the respective rights of secured and unsecured creditors, yet the Crown retained, under the Companies Acts, its prerogative right to be paid Crown debts in full in priority to other creditors of a company (*x*).

Prescription  
and limita-  
tion.

The Prescription Acts (*ante*, p. 353) and Statutes of Limitation do not affect the Crown unless there are express words. The same principle applies with reference to Acts creating offences. There is no limitation at common law to the right of the Crown, or of a subject in the name of the Crown to prosecute for treason, felony, or misdemeanour.

Entail.

[So, with regard to the right to a reversion in an estate, in *Re Cuckfield Burial Board* (1855), 24 L. J. Ch. 585, the question was whether sect. 7 of the Lands Clauses Consolidation Act, 1845 (8 & 9 Vict. c. 18), bound the Crown. That section enables persons having a limited interest in land as tenants for life or in tail to sell and convey lands for public purposes. In this case certain lands, which were required for a burial-ground, had been by a private Act settled upon the ancestor of the tenant in tail, with an express enactment that the entail was not to be barred, and with an ultimate reservation to the Crown upon failure of issue male. It was objected on behalf of the Crown that this section of the Act of 1845 did not enable the tenant in tail to convey away this ultimate reversion of the Crown. Romilly, M.R., in giving judgment, said: "The Act is very general in its wording; it certainly includes the present tenant in tail, and, notwithstanding the statutory disability to bar the entail, he has not only power to sell, but to convey and bar his heirs in tail and all remaindermen except the Crown, which cannot be bound by any Act without being named. He must therefore obtain the consent of the Crown before he can effectually convey."]

Letters  
patent.

[By the Statute of Monopolies (21 Jas. 1, c. 3), s. 6, the Crown is permitted to grant letters patent to the true and first inventor of a new manufacture, reserving to him the sole working and making such new manufacture for fourteen years. In *Feather v. R.* (1865), 6 B. & S. 257, it was decided that this

(*s*) *Ex parte Postmaster-General* (1879), 10 Ch. D. 595.

(*t*) *Re Oriental Bank Corporation* (1885), 28 Ch. D. 634; *Liquidator of Maritime Bank of Canada v. Receiver-General of New Brunswick*, (1892) A. C. 437.

(*u*) *Re West London Commercial Bank* (1888), 38 Ch. D. 364.

(*x*) See *Re Galvin* (1897), 1 Ir. Rep. 520.

statute, and any grant of letters patent made by the Crown by virtue of it, did not bind the Crown, and that the Crown was entitled itself to manufacture the new invention for the use of the nation, notwithstanding the grant of the letters patent; and in *Dixon v. London Small Arms Co.* (1876), 1 App. Cas. 632, this decision was affirmed and extended to the case of any person who, as agent for the Crown, manufactured an article as to the manufacture of which letters patent had been granted to some other person.]

“The King by his prerogative may sue in what Court he pleases, and of this prerogative he is not barred by Magna Charta, though it enacts in the negative, ‘*quod communia placita non sequantur curiam nostram sed teneantur in aliquo loco certo*,’ for he may have a *quare impedit* in the King’s Bench” (*y*). Again, it being, as Kelly, C.B., said in *Att.-Gen. v. Constable* (1879), 4 Ex. D. 172, “part of the prerogative of the Crown that the Sovereign is entitled to be an actor in any litigation affecting the rights of the Crown, and to determine in the Court of Exchequer any matter in which the Crown is interested,” it was held in that case that, “as there are certainly not any words in the Judicature Acts which limit the right of the Crown in respect of the decision of questions affecting the revenue,” the above-mentioned prerogative right was not affected by those Acts (*z*). Acts taking away the right to *certiorari* do not, as a rule, bind the Crown (*a*).

The prerogative of the Crown to admit appeals from the colonies is not, and cannot be, limited or abolished by any colonial legislation (*b*); but, so far as relates to matters within the competence of a colonial legislature (*c*), the prerogative may be cut down and the Crown bound by apt words in statutes, or a colonial statute may be so framed that the Crown’s prerogative to grant special leave to appeal may be inapplicable to decisions under the statute. Thus, *Théberge v. Laudry* (1876), 2 App. Cas. 102, turned on a Quebec Act, which transferred the decision of controverted elections from the Legislative Assembly of the province to a Court of justice, and provided that the decision of the Court should be final. The Judicial Committee held that the provision did not, taken by itself, destroy the prerogative of the Crown to allow an appeal; but having regard to the special nature of the subject, that election disputes did not relate to ordinary civil rights, and that the Act created a new and unknown jurisdiction so as to vest in a Court of justice

Choice of Courts.

Admitting appeals.

(*y*) *Magdalen College case* (1616), 11 Co. Rep. 68 *b*.

(*z*) See *Att.-Gen. v. Barker* (1871), L. R. 7 Ex. 177; *Dixon v. Farrer* (1886), 18 Q. B. D. 643.

(*a*) See Mellor and Short, *Crown Practice*, pp. 91, 115.

(*b*) *Cushing v. Dupuy* (1880), 5 App. Cas. 409, 417.

(*c*) See the Commonwealth of Australia Act, 1900 (63 & 64 Vict. c. 12), s. 9, articles 73, 74, and *infra*, p. 412.

the peculiar jurisdiction of the Legislative Assembly, and for these reasons came to the conclusion that the Legislature intended to make the decision final and not subject to review under the prerogative. And in *Moses v. Parker*, (1896) App. Cas. 245, the Judicial Committee came to a like conclusion against the prerogative to admit an appeal against the decision of the Supreme Court of Tasmania, referred to it under the special provisions of a colonial Act of 1858 relating to ungranted Crown lands; and they held that the form of the statute was such that the functions of the colonial Court under it were not ordinary judicial proceedings, and did not "attract the prerogative of the Crown to grant appeals." But in *Harrington v. Minister of Lands*, (1899) App. Cas. 408, the Judicial Committee held that an appeal to the Queen in Council was not barred by a statute of New South Wales, which declared that the judgment of the Supreme Court of the colony was to be "conclusive."

#### Mines.

The prerogative rights of the Crown extend to gold and silver in all lands, and in *Att.-Gen. v. Morgan*, (1891) 1 Ch. 432, it was decided that the Acts 1 Will. & Mary, c. 30, and 5 Will. & Mary, c. 6, although they relax the prerogative in favour of the subject, do not diminish the prerogative as to mines worked simply as gold mines, even where the gold is mixed with base metal (*d*).

But Crown  
may avail  
itself of  
statute with-  
out being  
named in it.

[Although the Crown may not be prejudiced by the operation of a statute which does not specially name the Crown, and although, as Alderson, B., put it in *Att.-Gen. v. Donaldson* (1842), 10 M. & W. 117, at p. 124, "it is inferred *prima facie* that the law, made by the Crown with the assent of Lords and Commons, is made for subjects and not for the Crown," still, if the King is desirous of performing some act in his natural capacity as an Englishman, and not in his public and royal capacity, it is a general rule that "the King may take the benefit of any particular Act, although he be not especially named in it" (*e*). Thus, in 7 Co. Rep. 32, the question was discussed whether the King, being tenant in tail, might by fine levied bar the estate tail by virtue of the statute *De Donis*, and it was there stated by Lord Coke, who was then Attorney-General, that the King could bar an entail; "for as he claims in respect of his natural capacity as heir of the body of a subject, and not in respect of his public and royal capacity, it would be hard that the King, being issue in tail of a gift made to a subject, should be in a worse condition than if he had not been King" (*f*).]

(*d*) As to Crown lands and royalties, see *British Columbia v. Canada* (1889), 14 App. Cas. 295; *St. Catherine's Milling Co. v. R.* (1888), 14 App. Cas. 46; *Att.-Gen. for Ontario v. Mercer* (1883), 8 App. Cas. 767.

(*e*) 1 Bl. Comm. 262.

(*f*) In *Duke of Brunswick v. King of Hanover* (1848), 2 H. L. C. 1; 6 Beav. 1, it was suggested that a foreign Sovereign could be sued in England in matters



4. [It was said by Lord Coke in the *Magdalen College case* (1616), 11 Co. Rep. 74 *b*, that there are three kinds of statutes which always bind the King without specially naming him (*g*). What statutes bind Crown without its being specially named in them.

The first kind is, statutes "that provide necessary and profitable remedy for the maintenance of religion, the advancement of learning, and the relief of the poor." Under this head Lord Coke classes the statute of 13 Eliz. c. 10, upon the construction of which the question in the *Magdalen College case* turns. "God forbid," he says, "that by any construction the Queen, who made the Act with the assent of the Lords and Commons, should be exempted out of this Act of 13 Eliz., which provides necessary and profitable remedy for the maintenance of religion, the advancement of good literature, and the relief of the poor." "It is to be known," he adds, "that the law never presumes that any one will do a thing either against religion or any religious duty." But this obligation has been held not to include the payment of poor-rates (*h*). Similarly, it was laid down in the *Case of Ecclesiastical Persons* (1601), 5 Co. Rep. 14, that "all statutes which are made to suppress wrong, to take away fraud, or to prevent the decay of religion, shall bind the King, although he be not named, for religion, justice, and truth are the sure supporters of the crowns and diadems of kings." So, also, it was held in *R. v. Archbishop of Armagh* (1721), 1 Str. 516, that an Irish Act, passed in 10 & 11 Chas. 1, for the consolidation of endowed rectories and vicarages, as being an Act for the advancement of religion, bound the Crown, although it was not named.] (a) Those for maintenance of religion, learning, and the poor.

[The second kind of statutes mentioned by Lord Coke in the *Magdalen College case* as binding the King when he is not named are statutes for the suppression of wrong (*i*). "The King," says Lord Coke, is "the fountain of justice and common right, and the King, being God's lieutenant, cannot do a wrong, *Solum rex hoc non potest facere quod non potest injuste agere* (*k*). And although a right was remediless, yet the Act which provides a necessary and profitable remedy for the preservation of it and to suppress a wrong shall bind the King." And in support of this doctrine Lord Coke cites *Willion v. Berkley* (1560), Plowd. 246, where it was decided that the statute *De Donis con-* (b) Statutes for suppression of wrong.

affecting his private capacity, although as a king he was exempt from British law. See Hall, Int. Law (3rd ed.), pp. 65—67; Calvo (4th ed.), ss. 1460, 1461. But this doctrine was rejected in *Mighell v. Sultan of Johore*, (1894) 1 Q. B. 149 (C. A.).

(*g*) [Dr. Wooddeson (Vinerian Lectures, vol. i. p. 31) says with regard to the kinds of statutes which are mentioned by Lord Coke as being exceptions to the general rule, "This is surely opening a very uncertain latitude."]

(*h*) *Vide ante*, p. 356.

(*i*) [In *Corporation of London v. Att.-Gen.* (1848), 1 H. L. C. 440, 448, the question whether "a statute which effects a transfer of the jurisdiction from one Court to another, or the extension of the jurisdiction of a Court," binds the Crown was raised, but was not decided.] *Vide supra*, p. 359.

(*k*) *Vide* Broom, Const. Law (2nd ed.), 724; Legal Maxims (6th ed.), 46.

*ditionalibus* (13 Ed. 1, c. 1) bound the King. "If a tenant in tail," says Lord Coke, "before the statute *De Donis* had alienated, it was tortious, but no remedy was given for it until the statute *De Donis* was made, and Lord Berkley's case was, that land was given to King Henry VII. and to the heirs male of his body, and the question was whether the King could aliene or not. And it was adjudged that he could not aliene, but that he was restrained by the said Act for three reasons. (1) Because such alienation before the statute was wrongful, although such wrong wanted remedy; for it would be a hard argument to grant that the statute which restrains men from doing wrong and ill should permit the King to do it. (2) Forasmuch as the said Act is *statutum remediale*, and provides a remedy for this remediless wrong, and that it was necessary and profitable to provide such remedy, it was adjudged that it should bind the King. (3) Because it was an Act of preservation of the possessions of noblemen, gentlemen, and others, it should also bind the King." Also, in 11 Co. Rep. 72 *b*, Lord Coke reports a resolution of the Court of King's Bench to the effect that the statute of 13 Edw. 1, c. 5, against tortious usurpation, being an Act to suppress wrong, was binding upon the King. Similarly, in 2 Inst. 681, Lord Coke says that it was held in *Beaumont's case* (1553) that the statute of 32 Hen. 8, c. 28, concerning discontinuances, which was passed to prevent husbands from alienating during coverture the lands belonging to their wives, bound the King, although he was not named in it, because it was made to suppress a wrong. Also, in Plowden's Comm. 236 *b*, it is said (*l*) that the Statute of Merton (20 Hen. 3), c. 5, which enacts that usuries shall not run against any being within age, binds the King, so that "if the King give land to another reserving a rent payable at a feast certain, and for default of payment that he shall double the rent for every default, and afterwards the grantor dieth, his heir, being within age, he shall not double the rent to the King." "For," says Plowden, "although the statute is general, yet the King is bound by it, because it is made for remedy of infants and for the public good." Plowden also says (*m*) that "the Statute of Merton (20 Hen. 3), c. 10, which ordains that every freeman which oweth suit . . . may freely make his attorney to do these suits for him, includes the King in the general words, because the Act is made for the ease and convenience of subjects." Also, in 1 Inst. 120 *a*, Lord Coke says, with regard to the statute of 31 Eliz. c. 6, s. 4, which enacts that simoniacal presentations to benefices shall be void, and that "the person so corruptly taking . . . any such benefice . . .

(*l*) [In 2 Inst. 89, Lord Coke mentions this as an alternative explanation of this statute.]

(*m*) [P. 236 *b*. Lord Coke in his exposition on this statute in 2 Inst. 99, is silent as to whether it binds the King or not.]

shall thereupon and from thenceforth be adjudged a disabled person in law to have or enjoy the same benefice," "that the Act, being made for suppression of simony and such corrupt agreements, so binds the King in that case as he cannot present him that the law hath disabled." Again, Lord Coke says in 11 Co. Rep. 74 *a*, with respect to 27 Eliz. c. 4, which enacts that "every conveyance made to the intent and of purpose to defraud and deceive any purchasers, shall be deemed only against such purchaser to be utterly void," "that if one who intends to sell his land had by fraud conveyed it, by deed enrolled, to the Queen to the intent to deceive the purchaser . . . in that case the purchaser shall enjoy the land against the Queen by the statute of 27 Eliz. c. 4, for, although the Queen is not excepted, yet the Act, being general and made to suppress fraud, shall bind the Queen." Also, in 2 Inst. 169, Lord Coke says, with respect to the statute of 3 Edw. 1, c. 5, which enacts that none shall disturb elections under pain of great forfeiture, "the Act is penned in the name of the King—viz., the King commandeth, and therefore the King bindeth himself not to disturb any electors to make free election" <sup>(n)</sup>. Also, in 2 Inst. 142, Lord Coke says, with respect to 52 Hen. 3, c. 22 (*rep.*), which enacted that none may distrain his freeholders to answer as to their freehold, *quia hoc nullus facere potest sine præcepto Domini Regis*: "This Act doth bind the King, for there is a writ directed to the King's bailiff of his manor of N., the words whereof be . . . and if the King's bailiff doth not obey this writ, the tenant shall have attachment against him" <sup>(o)</sup>. Also, in *Crooke's case* (1690), 1 Show. 208, the question was whether the King was bound by 22 Car. 2, c. 11, by which it was enacted that two certain parishes in London should be united and established as one parish, and that the first presentation should be made by the patron of that living whereof the endowment was of the greatest value. The King was the patron of that church which was of least value, but it was contended that by his prerogative he had a right to present first, and that this statute did not bind him, as he was not expressly named; but it was held otherwise, and the presentation by the other patron was confirmed. Again, in *R. v. Tuchin* (1704), 2 Ld. Raym. 1061, the question was whether the statute of 14 Edw. 3, stat. 1, c. 6, which enacted that no process should be annulled or discontinued by a mistake in writing, "but as soon as the thing is perceived by the challenge of the party, it shall be hastily amended in due form," extended to the Crown, and it was held by Powell, J., that it did not, "because the Crown is never named in an Act of Parliament by name of party." It seems, therefore, that, except for this expression, he would have held the Crown to be bound by this

<sup>(n)</sup> See also 4 Mod. 207.

<sup>(o)</sup> See also Show. 209.

Act. A similar point was discussed in *R. v. Wright* (1834), 1 A. & E. 434, where the question was whether 11 Geo. 4 & 1 Will. 4, c 70, s. 8, which enacted "that writs of error upon any judgment given by any of the said Courts [*i.e.* King's Bench, Common Pleas, and Exchequer] shall hereafter be made returnable only before the judges of the other two Courts in the Exchequer Chamber," applied to judgments upon indictments, the Crown not being specially named in the Act. As the point was raised by the Court itself, the Crown not disputing its liability, only one side was heard, and no considered judgment was given, but all these earlier decisions were cited in argument and apparently acquiesced in. Again, in *R. v. Ridge* (1817), 4 Price, 50, the question was whether certain bills, which had got into the hands of the Crown, but which, it was admitted by the Crown, were void as between the original parties as being tainted with usury, could be sued upon by the Crown on the ground that the usury laws, which did not specially name the Crown, could not bind it. It was held as being perfectly clear that, as the bills would have been void in the hands of an ordinary third person, their vice could not be removed by the fact that the third person in this case was the Crown. "This is too monstrous a proposition," said Garrow, B., "for serious consideration, and would require to be supported by undoubted authority." In *Baron de Bode v. R.* (1849), 13 Q. B. 378, the question was raised whether a writ of error would lie to the Exchequer Chamber in a case in which the Crown was the real party. "It was argued," said the Court, "that the statute by which this Court is constituted, 11 Geo. 4 & 1 Will. 4, c. 70, s. 8, did not bind the Crown, or affect the Queen's right to have a writ of error brought to the House of Lords. We think the Crown is bound by that statute. The rule on the subject is fully explained in *Att.-Gen. v. Allgood* (1743), Parker, 1. A difference is there remarked between statutes which name parties plaintiffs or defendants, which do not apply in words to the Crown, and statutes which use words sufficiently large to include the Crown, which is the present case."

(c) Statutes that tend to perform the will of a founder or donor.

[The third kind of statutes mentioned by Lord Coke in the *Magdalen College case* (1616), 11 Co. Rep. 74 *b*, as binding the King when he is not named, are statutes which tend to perform the will of the founder or donor. "That appears," said Lord Coke, "in *Statuto Templariorum* (17 Edw. 2, stat. 2), where it is said, *Ita semper quod pia et celeberrima voluntas donatoris in omnibus teneatur et expleatur, et perpetuo sanctissime perseveret.*" He further cites, in support of this proposition, the statute *De Donis conditionalibus* (13 Edw. 1, c. 1), "which," says he, "is notable to this purpose, for there it appears that it was necessary and profitable that the will of the donor should be observed, the words of which Act to this purpose are, *Propter quod Rex Dominus, perpendens quod necessarium et utile est apponere reme-*

*dum, statuit, quod voluntas donatoris in carta doni sui manifeste expressa de cætero observetur*, which bound the King, as is admitted in *Lord Berkley's case* in Plowden's Comm., where (p. 247) it is said, that men ought to observe the intent or will of other men, and to violate it is ill." It does not appear that this doctrine has been acted upon since Lord Coke's time, so that it is difficult to say what view the Courts would take of it at the present day.]

[These are the principal cases in which it has been held that the Crown is bound by statutes without being named in them. These cases are scarcely sufficient in number or variety to justify the very general adoption of the propositions propounded by Lord Coke in the *Magdalen College case* (1616), 11 Co. Rep. 74 b, with regard to the kind of statutes by which the Crown is bound without being named; at the same time there does not seem to be any case in which Lord Coke's propositions are either denied or overruled.] In *Ex parte Postmaster-General* (1879), 10 Ch. D. 595, Jessel, M.R., said: "The general rule, as expressed in Bacon's Abridgment [7th ed. at p. 462], is that 'where an Act of Parliament is made for the public good, the advancement of religion and justice, and to prevent injury and wrong, the King shall be bound by such Act, although not particularly named therein.'"

Lord Coke's proposition too sweeping.

5. [If a duty is thrown directly upon the Crown by statute, there is no way of enforcing the performance of that duty if left unperformed by the Crown. If a subject neglects to perform a statutory duty, there are several ways in which he may be proceeded against (*p*), but no proceedings of any kind can be taken either against the Crown itself or against any servant of the Crown to compel the performance of the statutory duty devolving on the Crown.] For no action of tort can be brought against the Crown upon any statute, in the absence of express provisions, in consequence of the maxim that the King can do no wrong (*q*). This rule had in Canada the curious result that persons injured on State railways had no remedy (*r*) until the passing of 44 Vict. c. 25 (Canada) (1 Rev. Stat. Canada, pp. 603-606). This immunity continues to be absolute in the United Kingdom (*s*), but in many colonies has been qualified or restricted by statute (*t*). The immunity excludes any remedy by mandamus. [Thus, in *R. v. Lords of the Treasury* (1872), L. R. 7

Statutory duties imposed upon the Crown.

(*p*) *Vide ante*, pp. 206 *et seq.*

(*q*) See Chitty, *Prerogatives of the Crown*, pp. 340-348; Broom, *Const. Law* (2nd ed.), p. 727.

(*r*) *R. v. M'Leod* (1883), 8 Canada, 1; *cf. R. v. MacFarlane* (1882), 7 Canada, 216.

(*s*) But see the Workmen's Compensation-Act, 1897 (60 & 61 Vict. c. 37), s. 8.

(*t*) *Att.-Gen. for Straits Settlements v. Wemyss* (1888), 13 App. Cas. 192; *cf. the claims against the Commonwealth Act, 1902* (No. 21 of 1902); see *Bond v. Commonwealth* (1903), 1 Australia C. L. R. 13, 23, Griffith, C.J. The anomalous nature of this remedy against the Crown, and the inconvenience of reference to England for leave to pursue it has led to legislation in colonies providing another

Q. B. 387, it appeared that 29 & 30 Vict. c. 39, s. 14, enacted that where any sum of money had been granted to Her Majesty to defray expenses for any specified public service, it should be lawful for Her Majesty to authorise and require the Treasury to issue, out of the credits granted to them, the sums that may be required to defray such expenses. By the Annual Appropriation Acts prior to 1889 a certain sum was applied to defray the charges for prosecutions at assizes and quarter sessions. The charges for certain prosecutions having been taxed in the ordinary way, the Lords of the Treasury refused to pay certain items, whereupon a writ of mandamus was moved for to compel them to do so, on the ground that it was a duty thrown upon them by statute. But the writ was refused. "When," said Cockburn, C.J., "a duty has to be performed (if I may use the expression) by the Crown, this Court cannot claim, even in appearance, to have any power to command the Crown. In like manner, when parties are acting as servants of the Crown, and are amenable to the Crown, whose servants they are, they are not amenable to this Court in the exercise of its prerogative jurisdiction" (*u*).] This subject was fully discussed in *R. v. Secretary of State for War*, (1891) 2 Q. B. 332, where it was pointed out that any obligation imposed on a servant of the Crown by statute or royal command is not enforceable by mandamus unless the statute makes it clear that the duty or trust imposed is not as between the Crown and its agent, but as between the agent and the subjects (*x*). This rule does not apply to cases where particular departments or officers of State have under statute duties of a ministerial character, as to which see *ante*, p. 209.

remedy. See the claims against Government and Crown Suits Acts, 1897 and 1904 (N. S. W.).

(*u*) See cases collected in Short and Mellor, *Crown Office Practice*, p. 17.

(*x*) See also *Kinloch v. Sec. of State for India* (1882), 7 App. Cas. 619.

## CHAPTER VIII.

## TERRITORIAL EFFECT OF BRITISH STATUTES.

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[THE territorial effect of British statutes may be conveniently discussed under the following heads:—

- (1) Upon British subjects and their property, real and personal, whether they reside within or without British dominions ;
- (2) Upon land in England, whether the owner or occupier of the land is or is not domiciled in England ;
- (3) On the persons of foreigners ;
- (4) On the property of foreigners out of British jurisdiction ;
- (5) In parts of the British Islands other than England ;] and
- (6) In the Colonies and India (a).

1. [The general rule as to the effect of a British Act of Parliament upon a British subject was stated by Sir T. Wilde *arguendo* in the *Sussex Peerage Claim* (1844), 11 Cl. & F. 95 (b), to be that “the British Parliament possesses the power to impose restrictions and disabilities and incapacities upon any British

British statutes may bind British subjects within or without realm.

(a) As to effect of colonial legislation, see *post*, ch. ix. p. 399.

(b) Reported also in 6 St. Tr. N. S. 79.

subject, which shall operate upon him anywhere." This general rule was accepted by the House of Lords, and it was held by them on this ground that the Royal Marriages Act, 1772 (12 Geo. 3, c. 11), which enacted, in sect. 1, that "no descendant of the body of George II. shall be capable of contracting matrimony without the previous consent of his Majesty . . . and that every marriage of any such descendant without such consent first had and obtained shall be null and void," operated to render void a marriage contracted by a descendant of George II. in Rome. It had been argued on behalf of the claimant of the peerage that this Act only applied to marriages contracted in England; but the judges who were consulted gave it as their opinion (at p. 144) that the intention of the Act was clearly to create "an incapacity attaching itself to the person of A. B. [*i.e.* the Duke of Sussex], which he carried with him wherever he went, for," they added, "it is clear that an Act of the Legislature will bind the subjects of this realm, both within the kingdom and without, if such is its intention." But whether any particular Act of Parliament purports to bind British subjects abroad will always depend upon the intention of the Legislature, which must be gathered from the language of the Act in question; there is no presumption either one way or the other], although from time to time judges utter *dicta* expressing a prepossession for or against the presumption that Parliament intends to legislate for British subjects wherever found (*c*). "Service out of the jurisdiction is an interference with the ordinary course of the law, for generally Courts exercise jurisdiction only over persons who are within the territorial limits of their jurisdiction. If an Act of Parliament gives them jurisdiction over British subjects wherever they may be, such jurisdiction is valid (*d*); but, apart from statutes, a Court has no power to exercise jurisdiction over any one beyond its limits" (*e*).

Statutes as  
to crimes.

With respect to statutes creating crimes the rule has been thus stated: "All crime is local (*f*). The jurisdiction over the crime belongs to the country where the crime is committed, and, except over her own subjects, Her Majesty and the Imperial Legislature have no power whatever" (*g*). This statement

(*c*) See, however, a *dictum* of Pollock, C.B., in *Rosseter v. Cahlmann* (1853), 22 L. J. Ex. 129.

(*d*) In *R. v. Earl Russell*, (1901) A. C. 446, it was held that the bigamy section 57 of the Offences against the Person Act, 1861 (24 & 25 Vict. c. 100), extended to cases of a bigamous marriage celebrated by a British subject outside the King's dominions: see per Halsbury, Lord High Steward, at p. 448; and in *Re Wilton*, (1900) 2 Ch. 481, the provisions of an English statute against marriage within the prohibited degrees were held to apply to a marriage abroad between domiciled British subjects of the Jewish race.

(*e*) *Re Busfield* (1886), 32 Ch. D. 131, Cotton, L.J.

(*f*) *Contra*, see Wharton, Conflict of Laws, and the decision in *Ex parte Nilius* (1884), 53 L. J. M. C. 157; Clarke on Extradition (4th ed.), 262.

(*g*) *MacLeod v. Att.-Gen. of N. S. W.*, (1891) A. C. 458, Halsbury, L.C.; and see *Re The Bigamy Laws of Canada* (1897), 27 Canada, 461.



is, however, subject to certain exceptions—*e.g.* piracy *jure gentium* (*h*), and cases within the Foreign Jurisdiction Acts (*i*). But no independent foreign State recognises the liability of its subjects to punishment in a foreign State for offences committed within the borders of the State to which the offender belongs (*j*); and in the Explosives Act, 1883 (46 & 47 Vict. c. 3), Parliament was careful to exclude aliens from the extra-territorial operation of the statute; and in the Official Secrets Act, 1889, aliens not in the service of the British, or of a colonial, Government are not brought within the penalties of the statute (*k*).

52 & 53 Vict.  
c. 52.

["When we speak of the right of a State to bind its own native subjects everywhere, we speak only of its claim and exercise of sovereignty over them when they return within its own territorial jurisdiction, and not of its right to compel or require obedience to such laws on the part of the other nations within their own territorial sovereignty. On the contrary, every nation has an exclusive right to regulate persons and things within its own territory, according to its own sovereign will and policy" (*l*).] All the authorities in England and the United States recognise in its fullest import the principle that real estate or immovable property is *exclusively* subject to the laws of the Government within whose territory it is situate (*m*). ["So firmly is this principle established, that in cases of bankruptcy the real estate of the bankrupt situate in foreign countries is universally admitted not to pass under the assignment" (*n*).] This rule does not, however, apply as between the United Kingdom and the rest of the King's dominions (*o*), inasmuch as the British Parliament is constitutionally competent to legislate for the whole. It has more than once been contended in Canada that the British North America Act, 1867, amounted to an abdication by the Imperial Parliament of all legislative authority in Canada in respect of the matters dealt with by that Act. This contention appears to have been based on reasoning founded on the Constitution of the United States, and has been

British statute does not bind real property of British subject which is without King's dominions.

30 & 31 Vict.  
c. 3.

(*h*) See *Att.-Gen. for Hong Kong v. Kwok a Sing* (1873), L. R. 5 P. C. 173.

(*i*) As to legislation for such places, see *Secretary of State v. Charlesworth*, (1901) A. C. 373; *Jenkyns' British Rule and Jurisdiction beyond the Seas*.

(*j*) The Larceny Act, 1896 (59 & 60 Vict. c. 52), is drawn so as to punish possession in the United Kingdom of property stolen, &c. abroad, thus avoiding the conflict with international views which would have been involved by punishing here theft by foreigners abroad.

(*k*) See *R. v. Jameson*, (1896) 2 Q. B. 425. The Territorial Waters Act, 1878 (41 & 42 Vict. c. 73), is based on a claim of territorial jurisdiction over the waters referred to in the Act.

(*l*) Story, *Conflict of Laws* (8th ed.), s. 22. *Sirdar Gurdial Singh v. Rajah of Faridkote*, (1894) A. C. 670; *Badische Anilin und Soda Fabrik v. Basle Chemical Works*, (1898) A. C. 200.

(*m*) Story, *Conflict of Laws*, s. 428: *Companhia de Moçambique v. British S. Africa Co.*, (1893) A. C. 602; *Dicey, Conflict of Laws*, 769.

(*n*) *Ibid.* s. 428.

(*o*) See *Williams v. Davies*, (1891) A. C. 460; *infra*, p. 391.

rejected by the Canadian Courts. Thus, in 1879 it was contended that the Imperial Medical Acts of 1858 (21 & 22 Vict. c. 90) and 1868 (31 & 32 Vict. c. 29) were overridden by the British North America Act of 1867, and by an Ontario Act of 1874 passed in exercise of the legislative authority given by the Act of 1867. But it was held that the Imperial Act of 1858 overrode the colonial Act, and was not impliedly repealed by the Act of 1867 (*p*).

Personal  
property of  
British  
subjects.

[With regard to personal property, the maxim of law is *Mobilia sequuntur personam*. "The right and disposition of movables is to be governed by the law of the domicile of the owner, and not by the law of their local situation" (*q*). Consequently a British statute binds the personal property of a domiciled British subject wherever situate. "Personal property," said Lord Loughborough in *Sill v. Worswick* (1791), 1 H. Bl. 690, "has no visible locality, but is subject to that law which governs the person of the owner. With regard to the disposition of it, it follows the law of the person. The owner in any country may dispose of his personal property. If he dies, it is not the law of the country in which the property is, but the law of the country of which he is a subject, that will regulate the succession. And . . . if a bankrupt [in England] happens to have property which lies out of the jurisdiction of the law of England, if the country in which it lies proceeds according to the principles of well-regulated justice, there is no doubt but that it will give effect to the title of the assignees." Thus, in *Colquhoun v. Brooks* (1889), 15 App. Cas. 493, the House of Lords was prepared to hold that personal property in a colony belonging to a person domiciled in England could be made subject to the British Income Tax Acts (*r*).

Real estate in  
the United  
Kingdom.

2. [In *Freke v. Lord Carbery* (1873), L. R. 16 Eq. 466 (*s*), Lord Selborne said that "the territory and soil of England . . . is governed by all statutes which are in force in England," and it makes no difference whether the owner of the soil be domiciled in England or elsewhere, nor whether the interest in the land is a chattel interest or a freehold interest (*t*). In *Doe d. Birtchistle v. Vardill* (1840), 7 Cl. & F. 895, the question was whether a child, born of domiciled Scotch parents who did not marry until after the child's birth, could inherit land in England. By the law of Scotland the child was legitimate,

(*p*) *R. v. College of Physicians and Surgeons* (1879), 44 Upp. Can. Q. B. 564. As to the power under this Act of punishing in Canada offences not committed there, see *Re The Bigamy Laws of Canada* (1897), 27 Canada, 461.

(*q*) Story, *lib. cit.* s. 376; Dicey, *Conflict of Laws*.

(*r*) See also *Colquhoun v. Heddon* (1890), 25 Q. B. D. 129; and *vide infra*, p. 374.

(*s*) *Cf. Duncan v. Lawson* (1889), 41 Ch. D. 398; *Pepin v. Bruyère*, (1900) 2 Ch. 504; (1902) 1 Ch. 24 (C. A.).

(*t*) This principle applies even when land is held in England by a foreign Sovereign or diplomatist. Royal and diplomatic privileges do not extend to real property, except as to exemption from levy of rates and taxes on such persons in respect thereof.

but by the Statute of Merton (20 Hen. 3), c. 9, "all the earls and barons with one voice answered that they would not change the laws of the realm, which hitherto have been used and approved," viz., that children not born in wedlock could not inherit land. Owing to this declaration of the law, it was held that the child could not take lands in England as the heir of his father.] In the case of personal estate the child would have been entitled as next of kin under the Statute of Distributions (*u*). [In *Curtis v. Hutton* (1808), 14 Ves. 537, it was held that, although the Mortmain Act did not extend to Scotland, still that land in England could no more be devised for the benefit of a Scotch charity than of an English charity. "The subject of the Statute of Mortmain," said the Court, "is real estate in England, and the owners of such property are disabled by the statute from disposing of it to any charitable use except in a particular way. It would be somewhat incongruous to refuse to permit such a disposition for the most laudable charitable institution in England, but if the party chose to carry his benevolent intention beyond England, to permit him to do so." In *Freke v. Lord Carbery* (1873), L. R. 16 Eq. 463, it was argued that a leasehold property situate in London was not subject to the limitations of the Thellusson Act, 39 & 40 Geo. 3, c. 98, if the testator was domiciled in Ireland. "This leasehold property," said Lord Selborne (p. 466), "is part of the territory and soil of England, and the fact that the testator has a chattel interest, and not a freehold interest, in it makes it in no way whatever less so." The maxim *Mobilia sequuntur personam* is inapplicable to a bequest of an interest in land, because "land, whether held for a chattel or freehold interest, is in nature, as a matter of fact, immovable and not movable" (*x*).] Real property is in all cases governed by the *lex rei sitæ*, and English Courts have no jurisdiction to adjudicate with reference to land out of England (*y*), nor will they recognise any foreign adjudication as to land in England. 9 Geo. 2, c. 36.

In *Maple v. Inland Revenue Commissioners*, (1906) 1 K. B. 591, Farwell, L.J., said: "There is, in my opinion, a presumption that the Legislature does not intend to impose taxes and penalties on persons who owe the State no allegiance, unless it be in respect of property situate, or matters and acts happening and done, within the jurisdiction" (*z*). And in the same case Moulton, L.J., said: "In the absence of express language to the contrary, such Acts (fiscal Acts) must be read as applying to the country of the statute itself and not to the world outside, and the duties and obligations imposed are limited accordingly."

(*u*) *Re Goodman's Trusts* (1881), 17 Ch. D. 290; Dicey, Conflict of Laws, p. 497 *et seq.*

(*x*) See *Duncan v. Lawson* (1889), 41 Ch. D. 398.

(*y*) *Companhia de Moçambique v. British South Africa Co.*, (1893) A. C. 602.

(*z*) He referred to *Municipal Statutes* (3rd ed.), 210, 211.

54 & 55 Vict.  
c. 39.

On this view it was held that a document executed in Paris between two English companies, but with exclusive reference to property situate in France, was not a "conveyance or sale" subject to stamp duty under sect. 4 of the Stamp Act, 1891.

The application of this rule is most frequently discussed with reference to death duties and income tax.

"An Act of the Imperial Parliament never imposes duties on or in respect of immovable property which is not situate in the United Kingdom" (*a*), but occasionally imposes such duties on the proceeds of the sale of immovables outside the United Kingdom if transmitted to the United Kingdom (*b*).

Death duties.

[In *Thomson v. Advocate-General* (1842), 12 Cl. & F. 1, a question was raised as to the effect of the Legacy Duty Act, 1815 (55 Geo. 3, c. 184, Sch. 3), on personalty locally situate in Scotland and passing under the will of a British subject who died domiciled in British Guiana. The statute enacts that "every legacy given by any will of any person" shall be subject to legacy duty, and it was held that the words "any person" referred only to such persons as were at their death domiciled in England. "It is admitted," said the consulted judges (p. 17), "in all the decided cases, that the very general words of the statute, 'every legacy given by any will of any person,' must of necessity receive some limitation, and . . . we think such necessary limitation is that the statute does not extend to the will of any person who at the time of his death was domiciled out of Great Britain, whether the assets are locally situate in England or not."] This view was adopted by the House of Lords (*c*).

In *Wallace v. Att.-Gen.* (1865), 1 Ch. App. 1, the question was raised whether the decision in *Thomson's case* applied to succession duty claimed on personal property in England consisting of a sum of Consols owned by a person domiciled in France. The Succession Duty Act, 1853 (16 & 17 Vict. c. 51), s. 2, enacts that "every disposition of property by reason whereof any person becomes beneficially entitled to any property . . . shall be deemed to have conferred upon the person so entitled a succession," as to which he shall be liable to pay duty. "I think," said Lord Cranworth, "that in order to be brought within this section the legatee must be a person who becomes entitled by virtue of the laws of this country." "The soundness of this principle of construction has never been impugned, nor has the British Legislature thought fit to put any different limitation upon the terms on which legacy duty and

(*a*) *Dancy*. Conflict of Laws, 784. As to the power to impose by imperial Parliament duties of customs on personalty in colonies, see *post*, p. 402.

(*b*) *Ibid.* 785.

(*c*) See *Harding v. Queensland Commissioners of Stamps*, (1898) A. C. 769, 773.

succession duty are imposed" (*d*). These decisions have established a rule of construction that expressions relating to succession duty do not apply to movable property (other than chattels real) belonging to persons of foreign domicile, unless a clear intention is shown to tax by reference to the situation of property and not by the domicile of its owner (*e*).

In *Wallace v. Att.-Gen.* it was admitted that leaseholds forming part of a succession were not exempt from duty (*loc. cit.*, p. 2), for leaseholds are by the Act included in the definition of real property.

The rules as to the statutes imposing legacy and succession duty apply also to the new estate duty imposed by the Finance Act, 1894 (*f*), so far as concerns movable property situate outside the United Kingdom (*g*) on which legacy and succession duty would have been chargeable or not chargeable on grounds other than those of relationship of the legatee or successor to the *de cuius*. In *Att.-Gen. v. Jewish Colonisation Association*, (1901) 1 K. B. 123 (*h*), a foreigner domiciled in Austria had made a disposition of property by deed to a company registered under English law for certain philanthropic objects. When the disposer died most of the securities disposed of were abroad. It was held that the doctrine *Mobilia sequuntur personam* did not apply so as to create any presumption as to its locality, because he had parted with the legal estate in his lifetime and his beneficial interest ceased on his death: and Collins, L.J., said (p. 136): "Whether, therefore, the test be that the appellants become entitled to the succession by virtue of English law, as stated by Lord Cranworth in *Wallace v. Att.-Gen.* (*i*), or that the intention that the property is to be brought under the protection of the English law, must be gathered from all the circumstances, or, what is probably only another way of arriving at the same result, that the property in question must have an English character (as Lord Westbury called it in *Att.-Gen. v. Campbell* (*k*)) stamped upon it, I think the succession has fallen within the Act."

Estate duty.

57 & 58 Vict.  
c. 30.

The law as to probate duty is different from that as to succession, probate duty being (by 55 Geo. 3, c. 184, s. 37, and schedule, Part III.) payable upon "the estate and effects" of the testator. The statute does not refer either to the person of the testator or his domicile; consequently, if the estate and effects are in foreign lands, probate duty is not payable upon

Probate duty.

(*d*) *Harding v. Queensland Commissioners of Stamps*, (1898) A. C. 769, 774, Lord Hobhouse.

(*e*) *Cf. Harding's case*; and *cf. In re Smyth*, (1898) 1 Ch. 89.

(*f*) See sect. 2, sub-sect. 2; *Att.-Gen. v. Jewish Colonisation Association*, (1900) 2 Q. B. 556; (1901) 1 Q. B. 123 (C. A.).

(*g*) See Dicey, *Conflict of Laws*, 796.

(*h*) *Affirming S. C.*, (1900) 2 Q. B. 556, where many authorities are cited.

(*i*) 1 Ch. App. 1, *ante*, p. 372.

(*k*) L. R. 5 H. L. 524.

them, though the testator may be domiciled in England (*l*); but if they are within the United Kingdom at the date of death, probate duty or the substituted estate duty is payable on this, even if the testator is domiciled abroad (*m*).

In *Blackwood v. R.* (1883), 8 App. Cas. 82, it was decided that the expression "personal estate" in the New South Wales Stamp Duties Act (1880), s. 16, must be read as limited to such estate as the colonial grant of probate conferred jurisdiction to administer, *i.e.*, to *bona notabilia* within the colony as to which alone, by the Charter of Justice granted under 4 Geo. 4, c. 96, the Supreme Court of the colony could grant probate (*n*). In *Commissioners of Stamps v. Hope*, (1891) App. Cas. 476, 481, it was held that an asset, to be personal estate within an Act imposing probate duties, must exist within the local area of the probate jurisdiction, and that debts have an attribute of locality—in the case of simple contract debts, the local jurisdiction of the debtor; in specialty debts, the place where the specialty is when the creditor dies. In *Payne v. R.*, (1902) App. Cas. 552, a debt which was a simple contract debt in Victoria, where both testator and debtor resided, was held to be an asset in Victoria recoverable under a Victorian probate, and liable to probate duty in Victoria, although the debt was created by statutory mortgages of land in New South Wales, and in that colony was a specialty debt (*o*).

#### Income tax.

Under the Imperial Income Tax Acts many difficult questions have arisen with respect to the incidence of the tax as to whether the income sought to be charged accrues from a source within the United Kingdom, or is received (*p*) from abroad by a person residing in the United Kingdom, or accrues from a trade, &c. carried on in the United Kingdom (*q*).

16 & 17 Vict.  
c. 34, s. 2,  
sched. D.

In *Colquhoun v. Brooks* (1889), 14 App. Cas. 493, the question arose whether a person resident in England was liable to pay income-tax under the Income Tax Acts upon profits made by him in a business in Australia and not remitted to the United Kingdom. Lord Herschell (at p. 503) said: "Notwithstanding the ingenious criticism to which they have been subjected . . . I think that, giving to the enactment its natural meaning, the facts stated do bring the respondent [the trader] within it. It is urged, however, for the respondent that, if this construction be adopted, a foreigner residing for a short time only in this

(*l*) *Att.-Gen. v. Hope* (1834), 1 C. M. & R. 552, per Wigram, *arguendo*. See also *Att.-Gen. v. Pratt* (1874), L. R. 9 Ex. 140, 143.

(*m*) *Commissioners of Stamps v. Hope*, (1891) A. C. 476.

(*n*) See *post*, p. 410; on this case see *Kannreuther v. Geiselbrecht* (1884), 28 Ch. D. 175, 179, Pearson, J.

(*o*) The Judicial Committee (p. 560) admitted that probate duty might also have to be paid in New South Wales before the mortgage could be discharged.

(*p*) See *Gresham Life Assurance Society v. Bishop*, (1902) A. C. 287; *Scottish Provident Institution v. Allan*, (1903) A. C. 129.

(*q*) See Dicey, *Conflict of Laws*, 799.

country would be subjected to taxation here in respect of the whole of his business earnings in his own country or elsewhere, that so to tax him would be opposed to international comity, and that a construction which would involve such a consequence cannot be correct. I think the learned counsel for the respondent are right in saying that the result which they point out would follow in the case of a foreigner, but I do not feel satisfied that it would involve a violation of international law, and that the construction contended for by the Crown ought on that ground to be summarily rejected. Reliance was placed upon the decisions under the Legacy and Succession Duty Acts (*r*), which have imposed a limit upon the broad language of the enactments subjecting legacies and successions to taxation. But it must be remembered that it was necessary to put some limits on these general terms in order to bring the matters dealt with within our territorial jurisdiction. Without such a limitation the Legacy Duty Act, for example, would have been applicable, although neither the testator nor the legatee, nor the property devised or bequeathed, was within or had any relation to the British dominions." Lord Macnaghten (p. 511), dealing with the same aspect of the case, said: "Moreover, although the contention on the part of the Crown, if carried to its legitimate conclusion, would certainly lead to startling results in the case of a foreigner temporarily resident in this kingdom, I do not think that even those results are so plainly at variance with what is due to the comity of nations as to compel your lordships summarily to reject the contention without considering carefully what the Legislature has actually said" (*s*).

In *San Paulo Brazilian Rail. Co. v. Carter*, (1896) App. Cas. 31 (*t*), the case last cited was held not to apply to the case of a railway company "resident" in the United Kingdom, and carrying on its business partly in the United Kingdom and partly abroad (*u*). As the company's business was not carried on wholly outside the United Kingdom, it was held liable to execution on the full balance of profit, and not only on sums actually received in the United Kingdom.

In *Kodak, Ltd. v. Clark*, (1903) 1 K. B. 505, an English company held the bulk of the shares in a foreign company, but was held not to be assessable upon the full profits of the foreign company, in the absence of evidence that it controlled or interfered with the management of the foreign company, or that the foreign com-

(*r*) *Ante*, p. 372.

(*s*) On this case see *Gresham Life Assurance Society v. Bishop* (1899), 68 L. J. Q. B. 967; *Apthorpe v. Peter Schoenhofen Brewing Co.* (1899), 4 Tax Cases, 41.

(*t*) This case has been followed in *Goerz v. Bell*, (1904) 2 K. B. 136, as to a company registered abroad, but having its head office in London.

(*u*) As to colonial legislation on this subject, see *Scottish Provident Institution v. Commissioners of Taxes*, (1901) A. C. 340.

pany was agent of the English company (*x*); and in *De Beers Consolidated Mines v. Howe*, (1905) 2 K. B. 612 (C. A.), it was held that a foreign corporation could be resident in the United Kingdom, and could there exercise its trade so as to become subject to the Income Tax Acts. The company in question was incorporated and registered in South Africa. The head office was at Kimberley, and it had an office in London, with directors at each place, having, with certain limitations, equal authority; but the controlling majority of directors was in London.

Foreigners  
while within  
this realm  
subject to our  
laws.

3. Foreigners have no absolute right to enter or remain in any State, and may be excluded or expelled by legislative authority (*y*), if not by the inherent authority of the State (*z*). [It is recognised by the law of nations that a foreigner, so long as he is within the limits of a State, is in all respects subject to its laws.] But this rule is more accurately described as one of municipal than of international law, since no sovereign State would tolerate any other rule (*a*). ["The laws of every State affect and bind directly all property, whether real or personal, within its territory, and all persons who are resident within it, whether natural-born subjects or aliens" (*b*).] Therefore, if a foreigner, while within England, offends against its laws, he is liable to be punished in the same way as if he were an Englishman. [By the Territorial Waters Jurisdiction Act, 1878 (41 & 42 Vict. c. 73), it is] declared and [enacted, in sect. 1, that "an offence committed by a person, whether he is or is not a subject of her Majesty, on the open sea within the territorial waters of her Majesty's dominions [that is, by sect. 7, 'within one marine league of the coast measured from low-water mark'] is an offence within the jurisdiction of the Admiral, although it may have been committed on board or by means of a foreign ship, and the person who committed such offence may be arrested and punished accordingly." This statute was deliberately passed to override the views of the majority of the judges in *R. v. Keyn* (1876), 2 Ex. D. 63, where the subject of the limits of the realm had been exhaustively discussed with great difference of judicial opinion, and to declare that the opinion of the minority was and always had been the law (*c*).

Limits of  
realm.

(*x*) Followed in *Gramophone, &c. Co. v. Stanley*, (1906) 22 T. L. R. 818, Walton, J., as to a German company in which an English company held shares.

(*y*) *Musgrove v. Chun Teong Toy*, (1891) A. C. 272; *Att.-Gen. for Canada v. Cain & Gihula*, (1906) 22 T. L. R. 757 (J. C.).

(*z*) See 6 Law Quarterly Review, 272.

(*a*) Diplomatic immunity is merely a personal and temporary privilege.

(*b*) Story, *Conflict of Laws* (8th ed.), s. 18; *cf.* Wharton, *Conflict of Laws* (2nd ed.), ch. xiii.

(*c*) See *R. v. Dudley* (1884), 14 Q. B. D. 281; *Emmanuel v. Mortensen* (July 19th, 1906)—Fraser, *Justiciary Cases*—where Lord Dunedin suggested that the terms of sect. 6 and the schedule of the Herring Fishery (Scotland) Act, 1889 (52 & 53 Vict. c. 23), were strong enough to indicate that Parliament considered the water specified as British even if not within the three-mile limit.



R. S. C. 1883, Ord. XI., defines the cases in which the English Courts are to exercise civil jurisdiction over persons or property not within England, and constitutes the present legislative limit of the civil jurisdiction of English Courts over foreigners abroad and British subjects in other parts of the empire (*d*).

[A foreigner resident in England is also entitled to the protection of English law, including the right to sue in the English Courts for any wrong, whether committed in or out of England, provided that it was a wrong in the country where it was committed, whether a civil or a criminal remedy was there available (*e*), and that it does not involve a question as to the title of land abroad (*f*). "The right of all persons," said the Judicial Committee in *The Halley* (1868), L. R. 2 P. C. 193, 202, "whether British subjects or aliens, to sue for damages in English Courts in respect of torts committed in foreign countries has long since been established (*g*), and there seems to be no reason why aliens should not sue in England for personal injuries done to them by other aliens, when such injuries are actionable both by the law of England and also by that of the country where they are committed" (*h*). So, also, a resident foreigner is entitled to avail himself of all privileges which may have been granted by statutory enactment just as though he were an Englishman. Brett, L.J., in *Boucicault v. Chatterton* (1877), 5 Ch. D. 267, 280, said, in dealing with an argument as to the meaning of the word "published": "If so, the word 'published' [in 7 & 8 Viet. c. 12, s. 19] must have one meaning when applied to English authors and another meaning when applied to foreign authors under precisely similar circumstances. That seems to me to be contrary to the common canon of the construction of statutes." In *Jefferys v. Boosey* (1854), 4 H. L. C. 815, a question arose as to the application of the Copyright Act, 1710 (8 Anne, c. 21), enacting that "the author of any book . . . shall have the sole liberty of printing and reprinting such book for the term of fourteen years." As to the effect of this enactment upon foreigners resident in this country, Lord Cranworth said: "*Primâ facie* the Legislature of this country must be taken to make laws for its own subjects exclusively, and where an exclusive privilege is given to a particular class at the expense of the rest of her Majesty's subjects, the object of giving the privilege must be taken to have been a national object, and the privileged class to be confined to a portion of that community for the general advantage of which the enactment is made. But when I say that the Legislature must

Resident foreigners entitled to privileges given by our laws.

(*d*) See Ann. Practice, 1906; Dicey, Conflict of Laws, 369.

(*e*) *Machado v. Fontes*, (1897) 2 Q. B. 231 (C. A.).

(*f*) Subject to the limitations imposed by R. S. C. 1883, Ord. XI.; *Companhia de Moçambique v. British South Africa Co.*, (1893) A. C. 602.

(*g*) See *Santos v. Illidge* (1860), 8 C. B. N. S. 861.

(*h*) See *Machado v. Fontes*, (1897) 2 Q. B. 231 (C. A.); Dicey, Conflict of Laws, 659.

*prima facie* be taken to legislate only for its own subjects, I must be taken to include under the word 'subjects' all persons who are within the Queen's dominions, and who thus owe to her a temporary allegiance. I do not doubt but that a foreigner resident here and composing and publishing a book here is an author within the meaning of the statute, and I go further—I think that if a foreigner, having composed, but not having published, a work abroad, were to come to this country and print and publish it here, he would be within the protection of the statute.”] And the opinion given by Parke, B., in that case, when advising the House of Lords, was adopted by the Privy Council in *Macleod v. Att.-Gen. of N. S. W.*, (1891) App. Cas. 455, 458. He said (4 H. L. C. 926): “The Legislature has no power over any persons except its own subjects—that is, persons natural-born subjects, or resident, or whilst they are within the limits of the kingdom. The Legislature can impose no duties except on them, and when legislating for the benefit of persons must *prima facie* be considered to mean the benefit of those who owe obedience to our laws and whose interests the Legislature is under a correlative obligation to protect.” [On similar grounds it was held by the House of Lords in *Princess of Reuss v. Bos* (1871), L. R. 5 H. L. 176, that if a company at its outset contemplates some description of management and of business in this country, it comes within the provisions of the Companies Act, 1862, and may be registered and afterwards wound up under that Act, although in substance all its operations may be abroad, and all the subscribers to the memorandum of association and all the directors are foreigners residing abroad.] In this case the Court had to consider whether a statute conferred a benefit on an alien obtainable in England, not whether it purported to impose a burden on him in respect of acts done outside England. And from this point of view there is no inconsistency between *Jefferys v. Boosey* and *Routledge v. Low* (i).

25 & 26 Vict.  
c. 89.

British  
statutes  
rarely bind  
foreigners  
out of British  
jurisdiction.

It is sometimes stated that a British Act inconsistent with international law has no validity. [“The British Parliament,” said the Judicial Committee in *Lopez v. Burslem* (1843), 4 Moore, P. C. 300, 305, “certainly has no general power to legislate for foreigners out of the dominions and beyond the jurisdiction of the British Crown;” and Story regards it as “plain that the laws of one country can have no intrinsic force *proprio vigore* except within the territorial limits and jurisdiction of that country (k). They can bind only its own subjects and others who are within its jurisdictional limits, and the latter

(i) *Post*, p. 381.

(k) The case of *Macnee v. Persian Investment Co.* (1890), 44 Ch. D. 306, is doubtful law. Chitty, J., there held that a company formed under English law to run a lottery in Persia could not be condemned as illegal within 9 Geo. 1, c. 19.

only while they remain therein; and whatever extra-territorial force they are to have is the result, not of any original power to extend them abroad, but of that respect which, from motives of public policy, other nations are disposed to yield to them, giving them effect, as the phrase is, *sub mutue vicissitudinis obtentu*, with a wise and liberal regard to common convenience and mutual benefits and necessities" (l).] This proposition is not true in municipal law. There is indeed a presumption against any intention to frame a statute so as to contravene a rule of international law (m); but it is a presumption only, for each State can, at its own international risks, reject the opinions of other States as to international law. "It is all very well to say that international law is one and indivisible, but it is notorious that different views are entertained in different civilised countries on many questions of international law, and when international law is administered by a municipal court it is administered as part of the law of that country" (n).

[But a subject of a foreign nation is under no obligation to comply with a British statute, except when resident in or passing through Great Britain itself, or some settlement or dependency of Great Britain where British law is in force, in or through British waters (o). In *Bulkeley v. Schutz* (1871), L. R. 3 P. C. 769 (p), the question was raised whether the Companies Act, 1862, could bind "a foreign partnership actually complete and existing in a foreign country." The Judicial Committee were clearly of opinion that the Companies Act, 1862, never contemplated that such a partnership as this could be brought within the purview of the English Act of Parliament, the English Legislature having no power over the shareholders of such a company.]

In *Re A. B. & Co.*, (1900) 1 Q. B. 541, 544, Lindley, M.R., said: "What authority or right has the Court to alter in this way the statutes of foreigners who are not subject to our jurisdiction? If Parliament had conferred this power in express words, then of course the Court would be bound to exercise it. But the decisions go to this extent, and rightly, I think, in principle: that unless Parliament has conferred upon the Court

(l) Conflict of Laws (8th ed.), s. 7; *Companhia de Moçambique v. British South Africa Co.*, (1893) A. C. 602.

(m) See Ilbert, *Legislative Methods and Forms*, p. 251.

(n) *Re Queensland Mercantile and Agency Co., Limited*, (1892) 1 Ch. 219, 226, Lindley, L.J.

(o) In *The Indian Chief* (1801), 3 Rob. Adm. 12, 23, Lord Stowell said that in Eastern parts, if Europeans settle or found a mere factory, they are not admitted into the general body and mass of the society of the nation, but they are considered as taking their national character from that association under which they live and carry on their commerce. Consequently any European (though he be of a different nationality) who takes up his abode in such a settlement is considered as amenable to the laws of the particular European country from which the original settlers came. The Foreign Jurisdiction Acts are based on this theory. But see *Abdül Messih v. Farrah* (1887), 13 App. Cas. 431.

(p) *Cf. Bateman v. Service* (1881), 6 App. Cas. 386.

that power in language which is unmistakable, the Court is not to assume that Parliament intended to do that which might so seriously affect foreigners who are not resident here, and might give offence to foreign Governments" (*q*).

In *Ex parte Blain* (1879), 12 Ch. D. 522, Brett, L.J., said that "foreigners not domiciled here, and not present in this country, could not be made subject to the English bankruptcy law, unless they had committed an act of bankruptcy in England." And James, L.J. (at p. 526), said: "The whole question is governed by the broad, general, universal principle, that English legislation, unless the contrary is expressly enacted, or so plainly implied as to make it the duty of an English Court to give effect to an English statute, is applicable only to English subjects or to foreigners who, by coming to this country, whether for a long time or a short time, have made themselves during that time subject to English jurisdiction" (*r*).

In *Bremer v. Freeman* (1857), 10 Moore, P. C. 306, the Judicial Committee said: "Their lordships, however, do not wish to intimate any doubt that the law of the domicile at the time of death is the governing law (*s*), nor any that the statute 7 Will. 4 & 1 Vict. c. 26 (the Wills Act, 1837) applies only to wills of those persons who continue to have an English domicile, and are consequently regulated by the English law"; and wills validly executed according to the law of the foreign domicile are admitted to probate in England (*t*). And it has been held in *Re Price*, (1900) 1 Ch. 442, that the provisions of sects. 9, 10, of the Wills Act, 1837, as to the mode of exercising powers of appointment, have no application to the wills of persons not domiciled in England purporting to execute powers of appointment created by an English will (*u*). In *Bloxam v. Faure* (1883), 8 P. D. 101; 9 P. D. 130, a will made according to the forms of English law by a person who was domiciled abroad at the time of her death, though her domicile of origin was English, was held not to be entitled to probate in this country. And it was there said that "every statute is to be so interpreted and applied, as far as its language admits, as not to be inconsistent with the comity of nations or with the established rules of international law," and that to allow such a will as this (which might perhaps have been pronounced invalid by the tribunals of the country where the alien in question died), to be proved in England would be acting contrary to this principle (*x*).

(*q*) This decision was affirmed, (1901) A. C. 102; *cf. R. v. Jameson*, (1896) 2 Q. B. 425.

(*r*) See *Re Ariola* (1890), 24 Q. B. D. 640.

(*s*) Story, Conflict of Laws, s. 473; *Dogliani v. Crispin* (1866), L. R. 1 H. L. 301.

(*t*) In the goods of *Huber*, (1896) P. 209.

(*u*) *Cf. Barretto v. Young*, (1900) 2 Ch. 339, Byrne, J.; *Pouey v. Hordern*, (1900) 1 Ch. 492, Farwell, J.

(*x*) On this question see Lord Kingsdown's Act, 24 & 25 Vict. c. 114; *Kirwan's Trusts* (1883), 25 Ch. D. 373, Kay, J.; *Hummel v. Hummel*, (1898)

But it would seem that, to dispose of realty or chattels real in England, the will must be validly executed and attested in accordance with English law (*y*); and it would also seem that the will of a foreigner who dies domiciled abroad is not subject to sect. 18 of the Wills Act, 1837, which relates to revocation of a will by the marriage of the testator (*z*).

[The question was raised in *Jefferys v. Boosey* (1854), 4 H. L. C. 815, how far a foreigner resident abroad may avail himself of any benefits or advantages conferred upon any particular class of individuals by a British Act. The Copyright Act, 1710 (8 Anne, c. 21), enacted that "the author of any book shall have the sole liberty of printing and reprinting such book for fourteen years." A question arose whether the enactment referred to British authors only (that is, to authors resident in this country at the time of the publication of their works here) or to all authors of every nation. In the Exchequer Chamber it had been held that the Act referred to all authors alike, but upon appeal the House of Lords, after an elaborate discussion, unanimously acted upon the opinion of the minority of the judges who were present during the argument, and reversed the judgment of the Court below, holding that the 8 Anne, c. 21, gives the benefit of copyright to British authors only. But the Act was repealed by the Copyright Act, 1842 (5 & 6 Vict. c. 45), and in *Routledge v. Low* (1868), L. R. 3 H. L. 100, the meaning of the word "author," as used in the latter Act, was much discussed, although the real point at issue in the case did not depend upon the construction put upon that word. Lords Cairns and Westbury appear to have considered that the author of any book first published in England, no matter whether he was himself in England at the time of the publication or not, was entitled to the benefits of the English Copyright Act. "A British statute," said Lord Westbury, "must be considered as legislation for British subjects only, unless there are special grounds for inferring that the statute was intended to have a wider operation. But by the common law of England, the alien friend, though remaining abroad, may acquire and hold in England all kinds of personal property (*a*), and when a statute is passed which creates or gives peculiar protection to a particular kind of personal property and does not exclude the alien, why is he to be deprived of his ordinary right of possessing such property or being entitled to such protec-

But a non-resident foreigner may take advantage of benefits conferred by British statutes.

1 Ch. 642; and as to the effect of change of domicile or a will validly made before the change, *Re Groos*, (1904) P. 273. The third section of the above Act is not limited to British subjects, *ib.* See also Dicey, *Conflict of Laws*, 684, 702.

(*y*) *Pepin v. Bruyère*, (1900) 2 Ch. 504; (1902) 1 Ch. 24, adopting *Freke v. Lord Carbery* (1873), L. R. 16 Eq. 461, and rejecting the Irish decision in *De Foggasieras v. Duport* (1881), 11 L. R. Ir. 123.

(*z*) *Loustalan v. Loustalan*, (1900) P. 211, 233, Lindley, M.R.

(*a*) And since 1870 also real property: 33 & 34 Vict. c. 14.

tion?" This reasoning seems cogent, and would probably be treated with respect should it become necessary to decide the point on any future occasion.]

In *Davidsson v. Hill*, (1901) 2 K. B. 606 (b), it was held by Kennedy and Phillimore, JJ., that the Fatal Accidents Act, 1846 (9 & 10 Vict. c. 93), giving a remedy to the representatives of a person killed by the negligence of another, enured in favour of the representatives of a foreign seaman killed on a foreign ship on the high seas by the negligence of a British ship. Kennedy, J., says (p. 614): "It appears to me, under all the circumstances, and looking at the subject-matter, more reasonable to hold that Parliament did intend to confer the benefit of this legislation upon foreigners as well as upon subjects, and that certainly, as against an English wrongdoer, the foreigner has a right to maintain his action under the statutes in question" (c).

Effect of  
British  
statutes pur-  
porting to  
affect for-  
eigners out of  
British juris-  
diction.

4. [Although the English law does not prevent a foreigner *resident abroad* from receiving benefit through the operation of a British statute, it must be accepted as a general rule, for purposes of construction, that "the British Parliament has no proper authority to legislate for foreigners out of its jurisdiction, and therefore no statute ought to be held to apply to foreigners with respect to transactions out of British jurisdiction, unless the words of the statute are perfectly clear" (d). If, however, "the Legislature of England in express terms applies its legislation to matters beyond its legislative capacity, an English Court must obey the English Legislature, however contrary to international comity such legislation may be" (e). And "if," as Cockburn, C.J., said in *R. v. Keyn* (1876), 2 Ex. D. 160, "the Legislature of a particular country should think fit by express enactment to render foreigners subject to its law with reference to offences committed beyond the limits of its territory, it would be incumbent on the Courts of such country to give effect to such an enactment, leaving it to the State to settle the question of international law with the Governments of other nations." And in *The Amalia* (1863), 1 Moore, P. C. N. S. 471, 474, Dr. Lushington said: "I never said that, if it pleased the British Parliament to make laws as to foreigners out of the jurisdiction, Courts of justice must not execute them; indeed, I said the direct contrary" (f). And this result may

(b) Dissenting from *Adam v. British and Foreign S.S. Co.*, (1898) 2 Q. B. 430.

(c) Cf. *The Milford* (1858), Swabey, 362, Dr. Lushington; in *The Bernina* (1888), 13 App. Cas. 1, the person killed was a foreigner, but the question was not raised.

(d) *The Amalia* (1863), 1 Moore, P. C. N. S. 471, 474, Dr. Lushington; cf. *A. B. & Co.*, (1900) 1 Q. B. 541; (1901) A. C. 102; *Sirdar Gurdial Singh v. Rajah of Faridkote*, (1894) A. C. 670.

(e) *Niboyet v. Niboyet* (1879), 4 P. D. 20, Brett, L.J.; and see Dicey, *Conflict of Laws*, p. 39.

(f) See hereon *Emmanuel v. Mortensen* (19th July, 1906), in which the High Court of Justiciary decided that the Herring Fisheries (Scotland) Act, 1889, and orders made thereunder prohibiting under penalties fishing in certain waters

also flow from necessary implication as well as from express enactment (*g*). Thus, the Merchant Shipping Act, 1854 (17 & 18 Vict. c. 104), s. 267, enacted "that all offences committed at any place out of British dominions by any seaman, who at the time when the offence was committed, or *within three months previously* (*h*), had been employed in any British ship" (*i*), shall be liable to be tried at the Central Criminal Court. In *R. v. Anderson* (1868), L. R. 1 C. C. R. 161, an American serving on board a British ship was indicted at the Old Bailey for the murder of a sailor while the ship was in the river Garonne in France. It was objected for the prisoner that the Court had no jurisdiction to try him. It was ultimately decided that the Court had jurisdiction independently of the above enactment (*k*), and consequently it became unnecessary to decide what was its effect. "The difficulty," said Blackburn, J., "as to the statute legislating for those out of the scope of its authority we must deal with when it arises. As a general rule, no doubt, we should construe a British statute according to the principles of international law, and confine a legislative enactment to a British subject, or to a person subject to British protection" (*l*).]

[Although British statutes sometimes purport to bind the persons of foreigners out of British jurisdiction (and, when they so purport, it is the clear duty of British Courts of law to execute and give effect to such statutes), it has been held otherwise with regard to the property of foreigners out of British jurisdiction. "It is quite clear," said Lord Westbury in *Att.-Gen. v. Campbell* (1872), L. R. 5 H. L. 524, 531, that "you cannot apply an English Act of Parliament to foreign property while it remains foreign property." This rule of law is "the natural consequence" of the proposition of international jurisprudence, that "every nation possesses an exclusive sovereignty and jurisdiction within its own territory. . . . For it would be wholly incompatible with the equality and exclusiveness of the sovereignty of all nations, that any one nation should be at liberty to regulate . . . things not within its own territory. It would be equivalent to a declaration that the sovereignty over a territory was never exclusive in any nation, but only concurrent with that of all nations, that each could legislate for all. . . .

British statutes presumed not to bind the property of foreigners out of British jurisdiction.

outside the three-mile limit, applied to all persons, whether subjects or aliens, fishing contrary to the prohibition in the Moray Firth.

(*g*) *Ex parte Blain* (1879), 12 Ch. D. 522, 526, James, L.J.

(*h*) Hereon see *R. v. Dudley* (1884), 14 Q. B. D. 273.

(*i*) This section is now repealed, but is re-enacted as sect. 687 of the Merchant Shipping Act, 1894 (57 & 58 Vict. c. 60); *cf.* sect. 5 of the Commonwealth of Australia Constitution Act, 1900 (63 & 64 Vict. c. 12).

(*k*) Not at common law, but under the Offences at Sea Act, 1536 (28 Hen. 8, c. 15).

(*l*) See *R. v. Dudley* (1884), 14 Q. B. D. 273, 284; and *cf. Re Ross* (1890), 140 U. S. 453, 476.

The absurd results of such a state of things need not be dwelt on " (m). ]

This rule is so far true that British Courts cannot act *in rem* against property of foreigners abroad, and that the *forum rei site* would disregard the English judgment *in rem* as made in violation of the ordinarily accepted rules of international comity, and that judgments of British Courts against foreigners who have not been served with process in the jurisdiction, or being abroad have not submitted to the jurisdiction, are recognised to be invalid (n). But for purposes of construction the rule is a presumption only.

Implication  
as to extent.

5. *Primâ facie* a British Act extends to the whole of the United Kingdom (o); but the extent is often restricted by express words, and Acts containing no express words limiting their extent are often held inapplicable to the whole United Kingdom by reason of the phraseology used. In *Westminster Fire Office v. Glasgow Provident Investment Society* (1888), 13 App. Cas. 699, 716, Lord Watson supplied the true criterion when he said that the tenor of the enactment there in question (14 Geo. 3, c. 78, s. 83), and the remedies provided by it, indicated that they were not intended by the Legislature to apply to Scotland, or to be administered by the Scotch Courts. The rule is thus stated in a Scotch case: " 35 & 36 Vict. c. 91, contains no words excluding Scotland from its provisions. Ireland is specially excluded, and the statute deals with interests which are the same on either side of the Border. The only reason for supposing that it was not meant to extend to Scotland is that it is drawn with such exclusive reference to English legislation, and English institutions and procedure, that though it would be easy enough to find equivalents in our usages for these requisites, it would be difficult, if not impossible, to follow out in Scotland the precise injunctions of the Act. It is not the part of the judge to criticise the Acts of the Legislature; but I do not, I think, transgress due limits if I say that it is unfortunate that our public bodies and our Courts of law should be put to solve questions such as these when a little ordinary care and inquiry by those by whom such English Acts are framed would prevent them from arising. There were only two courses which ought to have been followed, either to introduce a clause excluding Scotland, or to have provided proper machinery for its operation in Scotland. I incline to the opinion that the statute applies to Scotland because its object is general, and there are no words to exclude and no reason for excluding Scotland from its operation,

(m) Story, Conflict of Laws (8th ed.), s. 20; cf. Wharton, Conflict of Laws (2nd ed.), ch. xiii.

(n) *Sirdar Gurdial Singh v. Rajah of Faridkote*, (1894) A. C. 670; Dicey, Conflict of Laws, 369.

(o) As to extent of Acts, see *ante*, p. 57.



although I see great difficulties in the way of its practical application" (p). "The evil which the Act professes to remedy and the circumstances in which it was to apply arise in Scotland as much as in England, and though English phraseology is used to some extent and reference made to English officials and English machinery, this happens not infrequently in imperial statutes which are undoubtedly of application in all parts of the United Kingdom" (q).

In the construction of statutes extending to Great Britain or the whole of the United Kingdom, decisions of the Scotch or Irish Courts of the statute are considered by, but are not treated as absolutely binding on, the English Courts (r). The comity of Courts is regarded as entitling concurrent decisions in Scotland or Ireland to respect, but not to obedience, and it is for the House of Lords, as the *commune forum* of the three kingdoms, to settle (s) divergencies in the construction of Acts extending to the whole United Kingdom, as it is for the Judicial Council to make uniform the construction of imperial Acts.

When a general Act uses terminology which has different senses in the legal systems of England and Scotland (t), the question arises whether the term is to be construed differently according as the question of construction arises in English or in the Scotch Courts, or, if not, what sense is to be given to the term to be construed.

Construing terms in a general Act extending to Scotland and England.

In *R. v. Slator* (1881), 8 Q. B. D. 267, 272 (u), it was suggested that where terms of art are used which have a different meaning in England and Scotland, they are to be read in each country in the sense which they ordinarily bear there. But this suggestion must not be too implicitly followed, and the true rules as to the construction of terms used in statutes applying to more than one part of the United Kingdom are best stated in the words of Lord Macnaghten in *Income Tax Commissioners v. Pemsel*, (1891) App. Cas. 531, at pp. 579, 580: "It seems to me that statutes which apply to Scotland as well as to England, and which touch upon matters commonly dealt with in legal language, may be divided into three classes. Sometimes, but very rarely, legal terms are carefully avoided, as in the Succession Duty Act. Sometimes in very recent statutes, as in the Bills of Exchange Act and the Partnership Act, every legal term according to English law is immediately followed by its

Construction of English law terms in Act extending to Scotland.

16 & 17 Vict. c. 51.

(p) *Perth Water Commissioners v. McDonald* (1879), 6 Rettie (Sc.), at p. 1055, Lord Moncrieff.

(q) Per Lord Gifford, p. 1061; cf. as to Ireland, *R. v. Mallow* (1859), 12 Ir. C. L. R. 116.

(r) *Ide ante*, p. 14.

(s) The Railway and Canal Traffic Act, 1888 (51 & 52 Vict. c. 25), sect. 17 (5), contains provisions for appeal to the House of Lords in case of divergence between the Supreme Courts of England, Scotland, or Ireland.

(t) See *In re Wunzer, Limited*, (1891) 1 Ch. 305, as to the meaning of the term "sequestration" in sect. 123 of the Companies Act, 1862 (25 & 26 Vict. c. 89).

(u) As to the term "indictment."

5 & 6 Vict.  
c. 35.

equivalent in Scotch legal phraseology, and where no exact equivalent is to be found a neutral and non-legal expression is adopted. But in some cases certainly, and especially in the legislation of former days, the statute proclaims its origin and speaks the language of an English lawyer with some Scotch legal phrases thrown in rather casually. The Income Tax Acts, I think, fall within this class, though no doubt the Act of 1842 is less conspicuously English than its predecessors. How are you to approach the construction of such statutes? We are not, I think, quite without a guide. It seems to me that there is much good sense in what Lord Hardwicke says in his well-known letter to an eminent Scotch judge (*x*). Incidentally he happened to deal with the very point. He observed that where there are two countries with different systems of jurisprudence under one Legislature, the expressions in statutes applying to both are almost always taken from the language or style of one, and do not harmonise equally with the genius or terms of both systems of law. That was perhaps rather a delicate way of stating the case, but one must remember to whom Lord Hardwicke was writing, and his meaning is perfectly clear. Then he explained how these statutes ought to be expounded. 'You must,' he said, 'as in other sciences, reason by analogy'—that is, as I understand it, you must take the meaning of legal expressions from the law of the country to which they properly belong, and in any case arising in the sister country you must apply the statute in an analogous or corresponding sense, so as to make the operation and effect of the statute the same in both countries. Thus you get what Lord Hardwicke calls a consistent, sensible construction. A simpler plan is now recommended. Though the words have a definite legal meaning in England, you must not, it is now said, look at that meaning unless it be in vogue north of the Tweed. You must put out the light you have unless it penetrates directly to the farthest part of the room. That was not Lord Hardwicke's view. He seems to have thought reflected light better than none."

Rule as to  
taxing Acts.

A taxing Act must, if possible, be so interpreted as to make the incidence of its taxation the same in all parts of the United Kingdom to which it applies. This rule was laid down in the House of Lords in *Lord Saltoun v. Lord Advocate* (1860), 3 Macq. H. L. (Sc.) 659, by Lord Campbell, and was adopted in *Income Tax Commissioners v. Pemsel*, (1891) App. Cas. 532.

From this a second rule has been deduced, that in such an Act the Court *must* assume that the words used by the Legislature are used in their popular signification. Lord Campbell in *Lord Saltoun's case* (*ubi supra*) said: "The technicalities of the

(*x*) See Lord Kames' *Elucidations*, p. 385 (ed. 1800), referred to in the report of *Lord Saltoun's case* (1860), 3 Macq. H. L. (Sc.) 659, 675, note (*a*).

laws of England and Scotland where they differ must be disregarded, and the language of the Legislature must be taken in its popular sense." But the technicalities there in question were not technical expressions in the Act under consideration, but the technicalities in the law of real property outside the Act (*y*). And this rule is subordinate to those laid down by Lord Macnaghten (*supra*, p. 386).

By sect. 3 of the Wales and Berwick Act, 1746 (20 Geo. 2, c. 42), English and British statutes have effect in Wales and Berwick-on-Tweed, without express mention of either (*z*). No question has since that time arisen as to the effect of such Acts in those places. But occasionally mention is made of one or other or both, for purposes of inclusion or exclusion (*a*), and in recent Acts Wales is often named as a concession to the national sentiment of the Principality (*b*).

Effect in  
Wales and  
Berwick.

English statutes prior to the union with Scotland have no effect in that country. British statutes passed between 1704 and 1800 presumably apply to Great Britain unless a contrary intention appears (*c*).

Effect in  
Scotland.

[Where an Act contains a proviso that "nothing in this Act shall extend to Scotland," or something to that effect, showing that the Act was intended only for some particular part of the kingdom, the effect of thus limiting its operation is to put the excluded part of the United Kingdom, so far as that Act is concerned, into the position of a foreign country. It was expressly provided that the Bankruptcy Act, 1869, should not extend to Ireland; consequently, it was held in *Re O'Loghlen* (1871), 6 Ch. App. 406, that a debtor summons taken out under the Act could not be served on any person unless he *bonâ fide* reside in England. "The true principle of construction," said Mellish, L.J., "of Acts intended only for particular parts of the United Kingdom is that all things which are to be done must be done within the jurisdiction of the Court (which is regulated by the Act), unless the Act expressly or by necessary implication enables them to be done elsewhere." But a limitation of the operation of an Act to some particular part of the kingdom will not necessarily make the Act wholly inoperative with regard to all things relating or belonging to the excluded part. Thus, in *R. v. Brackenridge* (1868), L. R. 1 C. C. R. 134, it was contended that the Forgery Act, 1861, which by s. 55 enacts that "nothing in this Act shall extend to Scotland except as otherwise hereinbefore

32 & 33 Vict.  
c. 71.

24 & 25 Vict.  
c. 98.

(*y*) *Income Tax Commissioners v. Pemsel*, (1891) A. C. 532, 578, Lord Macnaghten.

(*z*) See 1 Bl. Comm. 93—99.

(*a*) See 11 & 12 Vict. c. 42, s. 32; 6 & 7 Will. 4, c. 103.

(*b*) *Vide* Int. Act, 1889, ss. 13, 16 (1) (2), 23 (*a*).

(*c*) In *Forayce v. Bridges* (1847), 1 H. L. C. 1, a question was raised as to whether 4 & 5 Will. 4, c. 22, applies to Scotland, but no general principles were discussed.

expressly provided," did not extend to the offence of forging Scotch bank-notes. But the Court held that it did, and that the effect of the above-mentioned words was merely to exclude from the operation of the Act offences committed and punishable in Scotland.] So, in *R. v. Lightfoot* (1856), 6 E. & B. 822, it was contended that a summons issued in England against the putative father of a bastard child could not be served on the father in Scotland, where he had gone to reside, as 7 & 8 Vict. c. 101, was a statute extending, by s. 75, only to England. As to this argument, Lord Campbell said (p. 829): "Section 75 is evidently intended merely to prevent the Act from having a general operation over the United Kingdom with regard to 'the laws relating to the poor,' and can have nothing to do with the incidents of a proceeding before English petty sessions as to the maintenance of a bastard born in England" (d).

Effect of  
English  
statutes in  
Ireland.

[From the conquest of Ireland by Henry II. until the passing of Poyning's law (10 Hen. 7), Ireland legislated for itself, and English statutes had no force there (e). From that date till 1719, no English or British Act applied to Ireland unless it was specially named or included. In that year, by 6 Geo. 1, c. 5, the British Legislature asserted the right to make laws for Ireland. This claim was abandoned in 1782 (22 Geo. 3, c. 53), and the Irish Legislature became independent from the British. So matters stood until the Union, and "since the Union all Acts of Parliament extend to Ireland, whether expressly mentioned or not, unless that portion of the United Kingdom be expressly excepted, or the intention to except it is otherwise plainly shown" (f).]

4 Anne, c. 16  
(Ruffhead).

[But the Act of Union has not extended to Ireland any English or British Act passed before 1800 which did not previously apply to Ireland. "If," said the Court in *Lane v. Bennett* (1836), 1 M. & W. 75, "the expression 'beyond the seas' in 4 & 5 Anne, c. 3, is to be construed as equivalent to 'out of the realm of England' [as we think it is], then the Act of Union does not bring Ireland within that realm or make it parcel thereof, but it forms one United Kingdom of both, and provides that all the laws then in force in each shall remain as by law established in each. Anyone, therefore, in Ireland is still out of that which was the realm contemplated by the statute of Anne, although England has ceased to be a separate kingdom,"] and various statutes, such as the Gambling Act (14 Geo. 3, c. 48), have been extended to Ireland by express enactment (g).

There is a presumption that an Act of Parliament will not

(d) See *Berkley v. Thomson* (1884), 10 App. Cas. 45.

(e) See 1 Bl. Comm. 103.

(f) 1 Steph. Comm. 101. See *R. v. Mallow* (1859), 12 Ir. C. L. R. 35.

(g) By the Life Insurance (Ireland) Act, 1860 (29 & 30 Vict. c. 42).

operate beyond the United Kingdom (*h*). The Isle of Man and the Channel Islands are not colonies, but are included in the definition given in sect. 18 (1) of the Interpretation Act, 1889, of the "British Islands." [The Isle of Man (*i*) is subject to the British Legislature, but British statutes do not extend to the island unless it is specially named (*k*).] Isle of Man.

As regards the Channel Islands, there is still some doubt whether an Act of Parliament becomes there, of its own force, a binding law (*l*). Where an enactment is meant to extend to the Channel Islands, it is usual (*m*), but not invariable (*n*), nor it would seem essential, to insert the following clause: "The Royal Courts of the Channel Islands shall register this Act," or a clause authorising the King in Council to make an order applying the Act to the islands, and requiring its registration there (*o*). Channel Islands.

6. The legislation applicable to a British possession falls into three classes: Colonies and India.

1. Imperial statutes expressly or by necessary implication extending to the possession;
2. (a) English or British statutes (*p*) extended to the possession as part of the personal law of the first settlers; or  
(b) Legislation of foreign States in force in the possession on its conquest or cession.
3. Acts, ordinances, or other forms of legislation of the possession, enacting new laws, or adopting British Acts with or without modification (*q*).

Theoretically, the British Parliament can legislate for the whole Empire. But it is never presumed to legislate except for the United Kingdom, unless apt words are inserted in the Act.

The term "British possession" used above means any part of the King's dominions, except the United Kingdom (*r*), and

(*h*) Ilbert, *Legislative Methods and Forms*, 251.

(*i*) Purchased in 1765 (5 Geo. 3, c. 26).

(*k*) See 1 Bl. Comm. 105, 106; Anson, *Law, &c. of Constitution* (4th ed.), ii. 257.

(*l*) Jenkyns, *British Rule and Jurisdiction beyond the Seas*, 37; Anson, *l. c.* 261.

(*m*) See Customs Consolidation Act, 1876 (39 & 40 Vict. c. 36), s. 289; Savings Bank Act, 1891 (54 & 55 Vict. c. 21), pp. 31, 32.

(*n*) See Penal Servitude Act, 1891 (54 & 55 Vict. c. 69), s. 10.

(*o*) The practice of registration seems to have been derived from the same source as the claim of *droit de régence*, which led to constitutional disputes in the reign of Louis XVI. A similar practice existed in French colonies: *Du Boulay v. Du Boulay* (1869), L. R. 2 P. C. 430. It is a moot question whether registration can be required if the order is not made with the concurrence of the island States: *Re States of Jersey* (1853), 9 Moore, P. C. 185; *Re Jersey Prison Board*, 8 St. Tr. (N. S.) 286, 1147; Jenkyns, *l. c.* 37, 38; Anson, *l. c.* ii. 261—263.

(*p*) The statutes of Scotland and Ireland do not bind any colony. Nova Scotia is under the English common law: *vide North American Life Co. v. Craigen* (1886), 12 Canada, 278, 292.

(*q*) This last head is dealt with in ch. ix. *post*, p. 399.

(*r*) Int. Act, 1889, s. 13 (2).

is therefore wide enough to include Man and the Channel Islands (s).

The term "colony" means any part of the King's dominions, except the British Islands and British India (t).

The term "British India" means all territories and places within the King's dominions which are for the time being governed by the King through the Governor-General of India, or through any governor or other officer subordinate to the Governor-General (u).

33 & 34 Vict.  
c. 104.

In *New Zealand Loan, &c. Co. v. Morrison*, (1898) App. Cas. 349, the question arose whether the Imperial Joint Stock Companies Arrangement Act, 1870, which purports to extend to all creditors, applied to creditors in the Colony of Victoria. Lord Davey (p. 357) said: "Their lordships do not think that the Arrangement Act of 1870, when read by itself and detached from the other companies, does, either by express words or by necessary implication extend to the colonies. That Act, however, cannot be regarded by itself, but as only one of a collection of Acts together containing the statutory law relating to Joint Stock Companies in the United Kingdom, which are compendiously referred to as the Companies Acts and need to be read together. It is impossible to contend that the Companies Acts as a whole extend to the colonies or are intended to bind the colonies. The colonies possess and have exercised the power of legislating on these subjects for themselves, and there is every reason why legislation of the United Kingdom should not unnecessarily be held to extend to the colonies, and thereby overrule, qualify, or add to their own legislation on the same subject." And in the result it was held that the Act applied only to creditors whose rights were in question in Courts of the United Kingdom (v).

Imperial Acts  
extending to  
colonies.

Imperial Acts extending to British possessions are of two kinds:

(a) Constitution Acts, applying to particular possessions or groups of possessions; and

(b) Acts extending to all possessions.

To the first class belong the British North America Act, 1867, and the Acts amending it, and the Australian Commonwealth Act, 1900, and the Constitution Acts establishing responsible government in many British possessions.

No legal question can arise as to the validity of any of these Acts, nor as to the competence of the Imperial Legislature to amend or alter them (x).

(s) Int. Act, 1889, s. 18 (1).

(t) *Ibid.* s. 18 (3).

(u) *Ibid.* s. 18 (4). "India" includes territories of native princes or chiefs under the suzerainty of the King, exercised through the Indian governors (s. 18 (5)).

(v) As to Bankruptcy Acts, see *post*, p. 391.

(x) *Vide ante*, p. 69; Broom, Const. Law, pp. 120, 126, 191; 1 Steph. Comm. 125; Todd, Parl. Govt. in Colonies, ch. iv.; *Routledge v. Low* (1868), L. R. 3 H. L. 100.

Acts which extend to all the King's dominions, override the inconsistent provisions of every prior Act (imperial or colonial) relating to any British possession. This is a clear constitutional rule, and has been recognised in Canadian decisions (*y*). Every subsequent colonial Act which is repugnant to an Imperial Act extending to the colony, or to any Order in Council or regulation made under the Act, or having in the colony the effect of the Act, is void and inoperative to the extent of the repugnancy (*z*).

Very few modern Acts extend to the whole of the Empire, and it is now usual to insert in Acts of this class a suspensory clause, enabling the Imperial Government to suspend the operation in a colony of an Imperial Act, so long as a satisfactory equivalent for its terms is provided by the colonial Legislature (*a*).

In the case of Merchant Shipping and Admiralty jurisdiction, and the Foreign Enlistment, Fugitive Offenders, and Extradition Acts the intervention of the Imperial Legislature is essential, the colonies only having such powers of extra-territorial legislation as are expressly conferred by their Constitution Acts or other imperial legislation.

In the case of an Imperial Act it would seem that the decisions of the Courts of the United Kingdom (even if not of the last resort), though not strictly binding on the colonial Courts, should be followed by them (*b*). And the same rule has been adopted as the ordinary but not as an inflexible rule by the Supreme Court of the United States in the case of statutes which copy the legislation of England or other States (*c*).

The English Bankruptcy Act, 1869, applied, *sub modo*, to all the King's dominions (*d*), and the Bankruptcy Act, 1883, seems to apply to land in any part of the King's dominions (*e*). In *Williams v. Davies*, (1891) App. Cas. 460, at p. 465, the Judicial Committee said: "The Supreme Court lays down the principle that an Imperial Act does not apply to a colony unless it be expressly so stated or necessarily implied. They point out that there is no case deciding that land in a colony passes under sect. 17 (of the Bankruptcy Act, 1869), and they dwell on the inconveniences which would arise from conflicts of law if an

32 & 33 Vict.  
c. 71.

(*y*) *R. v. College of Physicians and Surgeons* (1879), 44 Upp. Can. Q. B. 564, on the Medical Act, 1858.

(*z*) 28 & 29 Vict. c. 63, s. 2, *post*, p. 405.

(*a*) *E.g.* Extradition Acts, 1870 and 1873; Official Secrets Act, 1889; Foreign Enlistment Act, 1870. For list of such Acts, see Tarring, *Law of the Colonies*. As to the mode of proving the application of this Act to a foreign possession of the Crown, see *R. v. Jameson*, (1896) 2 Q. B. 425.

(*b*) See *Trimble v. Hill* (1880), 5 App. Cas. 342; *City Bank v. Barrow* (1880), 5 App. Cas. 664, 673, Selborne, L.C. This view has been accepted in Canada: *Paradis v. R.* (1887), 1 Canada Ex. 191; *McPherson v. R.* (1882), *ibid.* 53.

(*c*) *Inter-State Traffic Commission v. Baltimore and Ohio Railroad* (1891), 145 U. S. 263; *Whitney v. Fox* (1896), 166 U. S. 637.

(*d*) *Williams on Bankruptcy* (8th ed.), p. 1.

(*e*) *In re Artola* (1883), 10 Q. B. D. 640.

English statute were to transfer land beyond the limits of the United Kingdom. On these grounds they hold that under the word 'property' (in sect. 17) land in Lagos does not pass to the trustee in bankruptcy. Upon this reasoning their lordships have to remark that there is no question here of any conflict between English and foreign law. Lagos was not in 1869, and is not now, a foreign country. How far the Imperial Parliament should pass laws framed to operate directly in the colonies is a question of policy, more or less delicate, according to circumstances. No doubt has been suggested that if such laws are passed they must be held valid in colonial Courts of law (*f*). It is true that the laws of every country must prevail with respect to the land situated there. If the laws of a colony are such as would not admit of a transfer of land by a mere vesting order or mere appointment of a trustee, questions may arise which must be settled according to the circumstances of each case. Such questions are specially likely to arise in those colonies to which the Imperial Legislature has delegated the power of making laws for themselves, and in which laws have been made with reference to bankruptcy." The Judicial Committee went on to say, at p. 466: "If a consideration of the scope and object of a statute leads to the conclusion that the Legislature intends to affect a colony, and the words used are calculated to have that effect, they should be so construed. It has been pointed out above [p. 465] that some sections of the statute clearly bind the colonies in words which do not necessarily, but which may, apply to land. By the Bankruptcy Act of 1849 (12 & 13 Vict. c. 106), s. 142, all lands of the bankrupt 'in England, Scotland, Ireland, or in any of the dominions, plantations, or colonies belonging to her Majesty, are to vest in his assignees.' By the Bankruptcy Act of 1883 (46 & 47 Vict. c. 52), s. 168, the property which is passed to the trustee includes 'land, whether situate in England or elsewhere.' The Scotch Act of Bankruptcy, passed in 1856 (19 & 20 Vict. c. 72), s. 102, vests in the trustee the bankrupt's 'real estate situate in England, Ireland, or in any of her Majesty's dominions.' The Irish Act of Bankruptcy, passed in 1857 (20 & 21 Vict. c. 60), s. 268, vests in the bankrupt's trustee all his land, 'wheresoever situate.' No reason can be assigned why the English Act of 1869 should be governed by a different policy from that which was directly expressed in the Scotch and Irish Acts and in the English Acts immediately preceding and immediately succeeding. It is a much more reasonable conclusion that the framers of the Act considered that in using general terms they were applying their law wherever the Imperial Parliament had the power to apply it; and their lordships hold that there is no good reason why

(*f*) See *R. v. College of Physicians and Surgeons* (1879), 44 Upper Canada Q. B. 564, on the Imperial Medical Act, 1858.



the literal construction of the words should be cut down so as to make them inapplicable to a colony" (g).

*Prima facie* the common (h) and statute law of England, as it was on the plantation of the colony, extends to every British colony (including the United States of North America) which was colonised without conquest or cession from a civilised Power. It is deemed to have been planted with the settlers as their personal law. The question whether a given English or British Act extends to a colony is not in truth a question of construction, but of history. The answer, in the absence of specific provisions by charter (i) or legislation (k), depends not upon anything in the terms of the Act itself, but upon the opinions of the judges as to whether the Act is one which in its nature could be treated as forming part of the body of law which Englishmen would carry with them to a new country. For an Act passed prior to the formation of a colony to run in the colony without express words, the Act must be applicable to the circumstances of the colony (l), or be adopted by colonial Act or ordinance (m), or applied by royal charter (n). Planted colonies.

The law on this subject is thus summed up by Lord Watson in *Cooper v. Stuart* (1889), 14 App. Cas. 286, 291: "The extent to which English law is introduced into a British colony and the manner of its introduction must necessarily vary according to circumstances. There is a great difference between a colony acquired by conquest or cession, in which there is an established system of law, and that of a colony which consists of a tract of territory practically unoccupied, without settled inhabitants or settled law, at the time when it was peacefully annexed to the British dominions. The colony of New South Wales belongs to the latter class. In case of such a colony the Crown may by ordinance, and the Imperial Parliament or its own Legislature, when it comes to possess one, may by statute declare what part of the common and statute law of England shall have effect within its limits. But when that is not done the law of England must (subject to well-established exceptions) become from the outset the law of the colony, and be administered by its tribunals. In so far as it is reasonably applicable

(g) See *Ex parte Rogers* (1881), 16 Ch. D. 666, per Jessel, M.R.

(h) In the case of Gibraltar.

(i) The expression common law probably does not include what is called the common law of Parliament. See *Chamter v. Blackwood* (1904), 1 Australia C. L. R. 39, 57, Griffith, C.J., referring to Forsyth, *Cases on Constitutional Law*, p. 25, opinion of Cockburn and Bethell; and to *Kielley v. Carson* (1843), 4 Moore, P. C. 84. And it does not include ecclesiastical law: *Re Bishop of Natal* (1864), 3 Moore, P. C. N. S. 148.

(k) In the case of British Columbia.

(l) *Whicker v. Hume* (1858), 1 De G. M. & G. 506; 7 H. L. C. 124; *Jew v. McKinney* (1889), 14 App. Cas. 79; 1 Bl. Comm. 108.

(m) *Att.-Gen. v. Stewart* (1817), 2 Meriv. 143.

(n) See *Jephson v. Riera* (1835), 3 St. Tr. N. S. 591, as to Gibraltar, a conquered colony.

to the circumstances of the colony, the law of England must prevail until it is abrogated or modified either by ordinance or statute. The often-quoted observations of Sir William Blackstone (1 Comm. 107) appear to their lordships to have a direct bearing upon the present case. He says: 'It hath been held that if an uninhabited country be discovered and planted by English subjects, all the laws then in being which are the birthright of every English subject are immediately there in force (Salk. 411, 666). But this must be understood with very many and very great restrictions. Such colonists carry with them only so much of the English law as is applicable to the condition of an infant colony; such, for instance, as the general rules of inheritance and protection from personal injuries. The artificial requirements and distinctions incident to the property of a great and commercial people—the laws of police and revenue (such especially as are enforced by penalties), the mode of maintenance of the Established Church, the jurisdiction of spiritual courts (*o*) and a multitude of other provisions, are neither necessary nor convenient for them, and therefore are not in force. What shall be admitted and what rejected, at what times and under what restrictions, must, in case of dispute, be decided in the first instance by their own provincial judicature, subject to the decision and control of the King in Council; the whole of their Constitution being also liable to be new modelled and reformed by the general superintending power of the Legislature in the mother country.' Blackstone in that passage was setting right an opinion attributed to Lord Holt, that all laws in force in England must apply to an infant colony of that kind. If the learned author had written at a later date, he would probably have added that, as the population, wealth, and commerce of the colony increase, many rules and principles of English law, which were unsuitable to its infancy, will gradually be attracted to it, and that the power of remodelling its laws belongs also to the colonial legislature."

[In *Whicker v. Hume* (1858), 7 H. L. C. 124, the effect in a colony of this same statute was again discussed with reference to New South Wales, a colony planted by Englishmen, and not a conquered colony. It was contended that the decision in *Att.-Gen. v. Stewart* (1817), 2 Mer. 143, was inapplicable. The House of Lords, however, held that the general principles laid down by Sir William Grant in the words above quoted were entirely correct and governed this case. "It is true," said Lord Chelmsford, "that the inhabitants of a conquered country have those laws only which are established by the Sovereign of the conquering country, and that the colonists of a planted colony carry with them such laws of the mother country as are adapted to their new situation (*p*). But the opinion of Sir William Grant

(*o*) *Re Bishop of Natal* (1864), 3 Moore, P. C. N. S. 148.

(*p*) ["The common law of England is the common law of the plantations,

related generally, I think, to the Statute of Mortmain as applicable to all colonies, and therefore, upon general principles, I come without any hesitation to the conclusion that it is not applicable to New South Wales" (q). The English law as to perpetuities "is founded," as the Judicial Committee said in *Yeap Chea No v. Ong Chea No* (1875), L. R. 6 P. C. 381, 394, "upon considerations of public policy, which seem to be as applicable to the condition of such a place as Penang as to England," and, consequently, it was held to extend to the settlement of Penang.] In *Att.-Gen. for N. S. W. v. Love*, (1898) App. Cas. 679, 685, it was decided that the Nullum Tempus Act (9 Geo. 4, c. 16) had *prima facie* been applied to the colony of New South Wales by 9 Geo. 4, c. 83, and that it was not possible to limit the *prima facie* meaning of the latter Act by restricting the laws and statutes therein referred to to laws and statutes having relation to procedure. The Committee in reaching its conclusions were affected by the opinions of colonial judges as to the importance of 9 Geo. 4, c. 16, in the administration of justice in the colony, and by judgments from 1849 based on the view that it did there apply.

In considering whether a particular English statute applies to a colony, it is, of course, necessary to consider not only the circumstances of its plantation, but the charter of justice constituting the courts of the colony (r).

The authorities as to the extent of English law to British possessions are collected in *Quan Yick v. Hinds* (1905), 2 Australia C. L. R. 345, 355, 366, where it was decided that the Lotteries Act, 1823 (4 Geo. 4, c. 60), was not in force in New South Wales.

It has been held that the common law as to ancient lights as it stood at the passing of the Australian Courts Act, 1828 (9 Geo. 4, c. 83), was a law which could be applied to the colony of New South Wales, and was so applied by virtue of sect. 24 of that Act, even if it had not already been brought by the first settlers (s). But by a subsequent Act this decision has been overridden except as to actions decided or pending before the passing of the statute (t).

and all statutes in affirmance of the common law passed in England antecedent to the settlement of any colony are in force in that colony unless there is some private Act to the contrary, though no statutes made since these settlements are there in force unless the colonies are particularly mentioned." In these words Richard West gave his opinion as to the jurisdiction in the plantations, June 20th, 1720. See *Opinions of Eminent Lawyers*, by George Chalmers, vol. ii. 202.] Upon this rule depends the currency of the common law in the States of the American Union (other than Florida and Louisiana).

(q) Cf. *Jex v. McKimney* (1889), 14 App. Cas. 77; *Cooper v. Stuart* (1889), 14 App. Cas. 291.

(r) For these charters so far as in force, see *Statutory Rules and Orders Revised* (ed. 1904) under the title of the colony concerned, and subsequent annual volumes of St. R. & O.

(s) *Dalshery v. Permanent Trustee* (1904), 1 Australia C. L. R. 283.

(t) Ancient Lights Act, 1904 (No. 16), of New South Wales.

Conquered  
or ceded  
colonies

*Prima facie* those parts of the British Empire which have been acquired by conquest or cession from a civilised Power remain under the laws of the Power to which they originally belonged (*u*), subject to the modifications (*x*) introduced since the conquest or cession; and in the construction of colonial Acts or ordinances in these colonies, regard must be had to the common law there prevailing, and the special rules, if any, of construction adopted by that law.

[The effect of British statutes upon conquered or ceded colonies was elaborately discussed in the case of *Att.-Gen. v. Stewart* (1817), 2 Meriv. 143, 156. The question there raised was whether the Statute of Mortmain was in force in the island of Grenada. Sir William Grant decided that it was not, and, after citing the passage from Blackstone which has just been quoted, continued as follows: "Whether the Statute of Mortmain be in force in the island of Grenada will depend on this consideration—whether it be a law of local policy, adapted solely to the country in which it was made, or a general regulation of property equally applicable to any country in which property is governed by the rules of English law. Now the object of the Statute of Mortmain was wholly political; it grew out of local circumstances and was meant to have merely a local operation. It was passed to prevent what was deemed a public mischief in England, and not to regulate the power of devising or to prescribe the forms of alienation. The Mortmain Act, framed as it is, is quite inapplicable to Grenada or any other colony. In its causes, its objects, its provisions, its qualifications, and its exceptions, it is a law wholly English, calculated for purposes of local policy complicated with local establishments, and incapable, without great incongruity in the effect, of being transferred, as it stands, into the code of any other country. I am of opinion, therefore, that it constitutes no part of the law of the island of Grenada."]

India.

[India does not come precisely within the category either of planted or conquered colonies (*y*). "India," said the Judicial Committee in *Adv.-Gen. v. Ranee Surnomoyee Dossee* (1859), 2 Moore, P. C. N. S. 59, "was a settlement made by a few

(*u*) See Tarring's *Law of the Colonies* (2nd ed.), ch. i. pp. 4—37. In Quebec the law of champerty was introduced as part of the English criminal law by the Quebec Act, 1774: *Méloche v. Diguire* (1903), 34 Canada, 25.

(*x*) New York, Maine, and Jamaica were put under the common law of England. The criminal law of Quebec is that of England (14 Geo. 3, c. 83, s. 11), but the civil law is based on the custom of Paris. The civil and criminal law of the South African Colonies is based on the Roman-Dutch law: see *Journ. Society Comp. Leg.*, N. S. 1905, p. 34. The South African Courts often have to consider whether a particular rule of Roman-Dutch law was carried to South Africa and made part of the local law. In British Guiana an ordinance was passed in 1904 (No. 12) abrogating the *Senatus Consultum Velleianum* and the rescript *Authentica si quæ mulier*.

(*y*) See discussion of extent of British law in India: Ilbert, *Government of India*, 34, 56, 255, 387—405.

foreigners for the purpose of trade in a very populous and highly civilised country under the government of a powerful Mahomedan ruler, with whose sovereignty the English Crown neither attempted nor pretended to interfere for some centuries afterwards. . . . The laws and usages of Eastern countries where Christianity does not prevail are so at variance with all the principles, feelings, and habits of European Christians, that they have usually been allowed by the weakness or indulgence of the potentates of those countries to retain the use of their own laws, and their factories have for many purposes been treated as part of the territory of the Sovereign from whose dominions they come. But the permission to use their own laws by European settlers does not extend those laws to natives within the same limits who remain to all intents and purposes subjects of their own Sovereign, and to whom European laws and usages are as little suited as the laws of the Mahomedans and Hindoos are suited to Europeans." Consequently, "if the English laws were not applicable to Hindoos on the first settlement of the country," the question arises, "how could the subsequent acquisition of the rights of sovereignty by the English Crown make any alteration?" The answer to that question was given by the Judicial Committee in the following words, viz., "it might enable the Crown by express enactment to alter the laws of the country, but, until so altered, the laws remain unchanged." If, therefore, we wish to know whether any particular British statute binds the natives in India, it is necessary in the first place to ascertain whether, by any express enactment, British law has been introduced into the part of India in question, and then, if it appears that it has been so introduced, it is further necessary to consider, with regard to any particular enactment, whether it would be possible to enforce it among natives who are not Christians, but Mahomedans or Hindoos, without intolerable injustice and cruelty. For instance, to apply the law against bigamy to a people among whom polygamy is a recognised institution would be monstrous, and accordingly it has not been so applied. It was accordingly held in the above-mentioned case of *Adv.-Gen. v. Rance Saikoonjee Dossee*, that the English law of *felo de se* did not bind the natives in any part of India. Similarly, in *Ram Coomar Coondoo v. Chunder Canto Mookerjee* (1876), 2 App. Cas. 208, it was held "that the English laws of maintenance and champerty are of no force as specific laws in India. . . . They were laws," said the Judicial Committee, "of a character directed against abuses prevalent in England in early times, and had fallen into comparative desuetude. Unless, therefore, they were plainly appropriate to the condition of things in the Presidency towns of India, it ought not to be held that they had been introduced there as specific laws upon the general introduction of British law." So also in *Mayor of Lyons v. East India Company* (1836), 1 Moore,

P. C. 176, 3 St. Tr. N. S. 647, it was held that the English law incapacitating aliens from holding real property has never been introduced into India], and the statutes against superstitious uses have been declared inapplicable (z). [But, on the other hand, it was held in *Ruckmaboye v. Lullooobhoy* (1850), 8 Moore P. C. 4, 5 Moore Ind. App. 234, that the Limitation Act, 1623 (21 Jas. 1, c. 16) (a), extended to India and applies to Hindoos and Mahomedans as well as to Englishmen.] But the English law of dower has been recognised in India among Europeans and Armenians as a part of the law of inheritance (b), and the English law of inheritance has been applied to the Portuguese of Bombay (c), and the English law of Courts is to some extent applied (d).

(z) *Kusalchand v. Mahadev Giri* (1875), 12 Bombay, H. C. 214.

(a) Indian legislation has dealt with this branch of law: *Gobend Lall v. Debendronath* (1880), 5 Calcutta, 527.

(b) *Sarkies v. Proscromoyee Dossee* (1881), 6 Calcutta, 794; 8 *ibid.* 76. As to Parsees outside the Presidency town, see *Mithibai v. Limji Nowroji* (1881), 5 Bombay, 506; 6 *ibid.* 151.

(c) *Lopes v. Lopes* (1867), 5 Bombay O. C. 172.

(d) *Re Kahandas* (1880), 5 Bombay, H. C. (O. C.) 154.

## CHAPTER IX.

## THE LEGISLATION OF BRITISH POSSESSIONS.

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1. SPEAKING generally, the rules adopted for the interpretation of colonial and Indian legislation are the same as those accepted for statutes of the United Kingdom (*a*). General rules for interpreting colonial Acts.

When an English or British Act is transplanted, or by legislation in general terms extended, to a colony, the construction to be put on the Act is ordinarily that adopted by the English Courts (*b*).

Where a colonial legislature re-enacts in substantially the same terms a British Act not originally applying to the colony, the adopted enactment is construed in the colony in the same way as the original enactment (*c*). The two are treated as being *in pari materia* (*d*). But often a colonial Act is not an exact transcript of home legislation (*dd*). Thus in *Robinson v. Canadian Pacific Rail. Co.*, (1892) A. C. 481, and in *Miller v. Canada Grand Trunk Rail. Co.*, (1906) A. C. 187, it was held that Art. 1056 of the Quebec Civil Code could not be treated as an exact transcript of, nor construed in the same way as, the Fatal Accidents Act, 1846 (9 & 10 Vict. c. 93). Referring to English Acts to construe colonial Acts.

Throughout the British Empire, English books and cases on the construction of the statute law are freely cited and frequently followed; and the decisions of the Privy Council tend to produce uniformity of construction throughout the Empire.

(*a*) See *ante*, p. 13.

(*b*) See *Att.-Gen. for British Columbia v. Att.-Gen. for Canada* (1889), 14 App. Cas. 301, on the effect of the English Law Ordinance of 1867 of British Columbia.

(*c*) *Trimble v. Hill* (1880), 5 App. Cas. 342; and see *ante*, pp. 111, 129.

(*d*) See *Harding v. Commissioners of Stamps*, (1898) App. Cas. 773, as to a Queensland Act transcribing portions of the Succession Duty Act, 1853.

(*dd*) *Lewin v. . . .* 11 A. C. 639, 645.

Thus in *Railton v. Wood* (1890), 15 App. Cas. 363, 366, the Judicial Committee adopted, in the construction of a New South Wales statute, the canons of construction laid down by Selborne, L.C., in *Hill v. E. & W. India Dock Co.* (1882), 22 Ch. D. 14, and by Lord Cairns in the same case, 9 App. Cas. 453. But in cases of ambiguity in a colonial Act, the Privy Council may have difficulty in accurately ascertaining what is the special scope or policy of the statute brought into question before them. The Judicial Committee reversed two decisions of the Supreme Court of New South Wales (*e*), both turning on the policy of statutes, relating in one case to land, and the other to insolvency, in which the colonial and English notions of policy may very well have differed essentially, unless the meaning of the word "policy" be restricted to "the intention of the Legislature as deducible from the terms used": and the decision of that Board in *Wallis v. Solicitor-General for New Zealand*, (1903) App. Cas. 173, on the thorny question of Maori land rights, became the subject of hostile criticism in the colony (*f*).

Where the colonial differs from the British method of dealing with the subject-matter, decisions upon British Acts must be applied cautiously, if at all, to the colonial legislation. "There are decisions on the construction of English statutes with reference to English modes of taxation which would be of great value if it were first found that the Victorian Legislature had adopted any such method, but which are of little value until that conclusion has been reached. It appears to their lordships that the Court below has first searched for a rule of law, and has then bent the statute in accordance with it; whereas, until the rule, scope, and intention of the statute has been discovered, it cannot be seen what rules of law are applicable to it" (*g*).

Authorities competent to legislate for a colony.

2. In all parts of the King's dominions outside the British Islands (*h*), the legislative authority is either vested in the King in Council, or in a law-making body created (i) by the authority of the Crown expressed by charter, proclamation, or Order in Council, or (ii) by the authority of Parliament expressed in an Imperial statute creating or authorising the creation of a constitution (*i*).

(*e*) *Alison v. Burns* (1889), 15 App. Cas. 44; *Railton v. Wood* (1890), 15 App. Cas. 363.

(*f*) The decision was said by the New Zealand judges to be inconsistent with a prior decision of the Judicial Committee in *Nireahana Tamaki v. Baker*, (1901) App. Cas. 561.

(*g*) *Blackwood v. R.* (1882), 8 App. Cas. 82, 91.

(*h*) Defined *ante*, p. 389. As to the Channel Islands and the Isle of Man, see *ante*, p. 389.

(*i*) See *Campbell v. Hall* (1775), 1 Cowp. 204; 20 St. Tr. 239; 6 Geo. 3, c. 12, *post*, pp. 389, 390; *Att.-Gen. for Canada v. Cain and Gilhula* (1906), 22 Times L. R. 757 (J. C.).



On the conquest or cession of territory, the Crown is entitled to legislate by proclamation for the newly-acquired possession. This course was adopted on the conquest of French Canada and Grenada (*j*), of Ceylon (*k*), of the Transvaal (*l*), and of the Orange River Colony (*m*). It is usually resorted to only within a short time after the acquisition of the new possession. Parliament may at any time interfere by legislation (*n*) to take away or control this prerogative, and even when it has not done so the Crown usually acts by charter or Order in Council.

In certain cases a colonial governor is, under the Crown, the sole legislative authority, *e.g.*, in the case of Basutoland, Bechuanaland and Zululand. The legislation is usually effected by proclamation. The limitations of an authority given by a colonial statute to a governor to legislate in this manner were considered in *Sprigg v. Sigcau*, (1897) App. Cas. 237.

The original system of government in certain territories which are now in the fullest sense British possessions, *e.g.*, India, was regulated by charters, *i.e.*, letters patent under the Great Seal (*o*), issued by the Crown to trading companies. Such charters are not now issued, except under authority of Parliament (*p*). The legislatures of many British possessions have been created by charter (*q*).

And the British colonies, now comprised in the United States, were for the most part governed under charters, and the validity of enactments passed by the local law-making body was tested by reference to the charters in much the same way as by-laws made by municipal corporations or chartered guilds, companies, or societies in England. Since the creation of the federal constitution of the United States, the federal and state Courts have freely exercised the power of pronouncing upon the validity of federal and state legislation by reference to the instruments determining the respective constitutions and powers of the federal and local legislatures (*r*).

The Crown may legislate by Order in Council for those British possessions (*s*) as to which the Royal power has not been

(*j*) 7 Oct. 1763. See recitals of the Quebec Act, 1774 (14 Geo. 3, c. 78), and *Campbell v. Hall* (1775), 20 St. Tr. 239, 322, as to Grenada.

(*k*) Proclamation as to administration of justice, 23 Sept. 1799; St. R. & O. Rev. (edit. 1904), tit. "Ceylon," 1.

(*l*) See the Transvaal Proclamations, 1900 to 1902, there described as statutory proclamations (doubtless to distinguish them from executive proclamations), and repealing many laws and resolutions of the Volksraad of the South African Republic. As to the judicial right of testing those laws and resolutions, see *Hess v. State* (1895), 2 S. African Off. Rep. 112.

(*m*) The validity of some proclamations issued in this Colony by the Governor (who for a time absorbed all executive, legislative and judicial functions) has been challenged: see Orange River Ordinance No. 1 of 1902.

(*n*) *Campbell v. Hall* (1775), 20 St. Tr. 239, 304.

(*o*) As to the Indian charters, see Ilbert, Government of India, chap. i.

(*p*) *E.g.*, Rhodesia: British North Borneo.

(*q*) Jenkyns, British Rule, &c. beyond the Seas, 13.

(*r*) See Cooley, Constitutional Limitations.

(*s*) *Kielley v. Carson* (1843), 4 St. Tr. (N. S.) 669.

specifically granted away or delegated (*t*). This power has been in many instances exercised for the purpose of framing or approving a colonial constitution. Where the constitution is so framed, and immediately and irrevocably grants what Lord Mansfield called "the subordinate legislation" over the possession to a representative, *i.e.*, an elective, assembly, the power to legislate by Order in Council is spent (*u*) or suspended till the colony surrenders its representative constitution (*x*). As regards the Straits Settlement the power is statutory. (29 & 30 Vict. c. 115.)

50 & 51 Vict.  
c. 54.

A doubt arose as to the power of the Crown to legislate by Order in Council for territories in which there is no civilized government in which settlements are made by British subjects and which become British possessions. This doubt was resolved by the British Settlements Act, 1887, which empowers the King in Council to make and alter laws for such territories. The Act does not apply to possessions acquired by cession or conquest, nor to possessions which for the time being have been brought within the jurisdiction of the legislature of any British possession (*y*) otherwise than by virtue of the Act of 1887, or of the Acts of 1843 and 1860, which it repeals (*z*).

Imperial  
legislation.

The imperial legislation extending to British possessions falls into two classes :—(i) That creating a general law for imperial purposes (*a*) ; (ii) that determining the constitution of a possession or some matter particular to the possession.

(i) In modern Acts extending to the whole Empire it is usual to insert a clause limiting or suspending the operation of the Act in British possessions so long as local legislation on the same subject is in force (*b*).

The Act (6 Geo. 3, c. 12) declaring the legislative competence of the British Parliament over the American colonies seems to be still in force, if and so far as it applies to Canada and the West India Islands. But since 18 Geo. 3, c. 12, s. 1, taxing Acts are not expressed to extend to colonies, except with reference to duties for the regulation of commerce, and these, if collected in a colony, must be spent there.

The Customs Acts extend to all British possessions abroad, except where otherwise expressly provided or limited by express reference to the United Kingdom or Channel Islands, and

(*t*) Jenkyns, *British Rule, &c.*, gives a list (App. II.) of the cases in which the power has been abandoned.

(*u*) *Campbell v. Hall* (1775), 1 Cowp. 204; 20 St. Tr. 239, 327, 329; Anson, *Law, &c. of Constitution* (4th edit.), vol. ii. pp. 269, 275; Jenkyns, *British Rule, &c. beyond the Seas*, 91, 92.

(*x*) See Anson, *op. cit.* ii. 268.

(*y*) See 50 & 51 Vict. c. 54, s. 6.

(*z*) The repealed Acts related to the Falkland Islands and the West Coast of Africa.

(*a*) See Jenkyns, *British Rule and Jurisdiction beyond the Seas*, chap. ii.

(*b*) This Act seems to have been suggested by the decision in *Campbell v. Hall* (1775), 20 St. Tr. 239, 321.

except as to such possession as shall by local Act or ordinance have provided, or may hereafter with the sanction of His Majesty make entire provision for the management and regulation of the local customs, or in like manner make express provisions in lieu or in variation of any of the clauses of the Act of 1876 (39 & 40 Vict. c. 36), s. 151.

The Extradition Acts, 1870, 1873 and 1895, and the International Copyright Act, 1886, and the Merchant Shipping Act, 1894, contain suspensory clauses.

A colonial law which assigns jurisdiction to a Court created under an imperial Act is not invalid, but the Court may decline jurisdiction (*c*).

3. In one very important respect the legislation of a British possession differs from that of the United Kingdom. Acts of the Imperial Parliament, as has been already pointed out, cannot be questioned as *ultra vires* or invalid by any Court (*d*). Distinction between British and Colonial legislation.

The constitutions granted to British possessions, whether by proclamation, charter, Order in Council, or imperial statute, differ from that of the United Kingdom in being written, and in being not original but derivative and in a sense subordinate, and in being more or less rigid and restrictive of the legislative body which they create.

In the case of such legislatures the Courts of the possession, and in the last resort the Judicial Committee of the Privy Council, may have to adjudicate not only on the meaning of a statute or ordinance, but also as to its validity, by reference to the instruments creating the authority to legislate. As to the latter question they have to discharge a function analogous to that discharged by an English Court in dealing with subordinate legislation (*e*), but more closely resembling the functions of the Supreme Court of the United States with respect to the limits *inter se* of state and federal legislative competence. This rule is thus expressed in *Hari v. Secretary of State for India* (1903), 27 Bombay, 425, 439, by Jenkins, C.J.: "It will be seen that the really important question in this case is whether the City of Bombay Improvement Act (Act 4 of 1898) was within the power of the local legislature, and that I propose first to consider. It is a legitimate source of discussion in this Court, for the Governor of this Presidency in Council is a subordinate legislature whose authority in way of law-making is subject to and dependent upon the Acts of Parliament from which their legislative powers are derived, so that we have the right, and are charged with the duty of deciding judicially

(*c*) See *Att.-Gen. for Canada v. Flint* (1884), 17 Canada S. C. 707, following *Valin v. Langlois* (1880), 5 A. C. 115.

(*d*) Dicey, *Law of the Constitution* (4th edit.), c. 2, describes colonial legislatures and those of countries having rigid constitutions as non-sovereign law-making bodies.

(*e*) *Ante*, pp. 256 *et seq.*

whether the impugned legislation is within the scope of their authority.”

(ii) In dealing with colonial constitutions, the Judicial Committee declines to lay down any hard and fast rules of construction (*f*); and the tendency of its decisions is in conformity with political considerations, and is markedly to extend (*g*) and not to limit the authority of colonial legislatures, which are recognised as supreme within their own domain.

Colonial constitutions cannot be repealed or amended by colonial legislatures unless they contain express provisions to that effect. The British North America Act, 1867, can be amended only by the Imperial Parliament (*h*), but the Constitution Acts of the Australian Colonies in most cases (*i*), and that of the Commonwealth (*k*), contain provisions empowering the colonial legislature to amend certain parts of the constitution.

India. The legislative bodies in British India (*l*) and other British possessions are not delegates of the Imperial Legislature. They are restricted in the area of their powers, but within that area are supreme.

In *R. v. Burah* (1878), 3 App. Cas. 889, the Judicial Committee in speaking of the powers of the Legislative Council of India said: “The Indian Legislature has powers expressly limited by the Act of the Imperial Parliament which created it, and it can, of course, do nothing beyond the limits which circumscribe these powers. But when acting within these limits it is not in any sense an agent or delegate of the Imperial Parliament, but has, and was intended to have plenary powers of legislation as large and of the same nature as those of Parliament itself.”

Canada. In *Hodge v. R.* (1883), 9 App. Cas. 117, 132, which turned on the British North America Act, 1867, Sir Barnes Peacock said: “It appears to their lordships . . . that the objection thus raised by the appellants (to the Liquor Licence Act, 1877, of Ontario) is founded on an entire misconception of the true character and position of the provincial legislatures (of Canada). They are in no sense delegates of, or acting under any mandate of, the Imperial Parliament. When the British North America

(*f*) *Citizens' Insurance Co. v. Parsons* (1881), 7 App. Cas. 96; *Hodge v. R.* (1883), 9 App. Cas. 117, 128.

(*g*) *Powell v. Apollo Candle Co.* (1885), 10 App. Cas. 282; *Musgrove v. Chung Teong Toy*, (1891) App. Cas. 247.

(*h*) See Todd, *Parliamentary Government in the Colonies* (1st edit.), p. 189; 34 & 35 Vict. c. 28; 38 & 39 Vict. cc. 38, 53; 63 & 64 Vict. c. 12.

(*i*) *E.g.*, Western Australia Constitution Act, 1890 (53 & 54 Vict. c. 26), s. 5.

(*k*) See 63 & 64 Vict. c. 12, Sched. art. 128.

(*l*) See the judgment of Bhashyam Ayyangar, J., in *Bell v. Madras Municipal Commissioners* (1902), 25 Madras, 457, 459, as to the power of the Madras Legislative Council, and the judgment of Jenkins, C.J., in *Hari v. Secretary of State for India* (1903), 27 Bombay, 425, 439, as to the power of the Bombay Legislative Council.

Act enacted that there should be a legislature for Ontario, and that its legislative assembly should have exclusive authority to make laws for the province and for provincial purposes in relation to the matters enumerated in sect. 92, it conferred powers not in any sense to be exercised by delegation from, or as agents of, the Imperial Parliament, but authority as plenary and as ample, within the limits prescribed by sect. 92, as this Imperial Parliament in the plenitude of its power possessed and could bestow. Within these limits of subjects and area the local legislature is supreme, and has the same authority as the Imperial Parliament or the Parliament of the Dominion would have had under like circumstances to confide to a municipal institution or body of its own creation to make bylaws or resolutions as to subjects specified in the enactment, and with the object of carrying the enactment into operation and effect."

And in *Powell v. Apollo Candle Co.* (1885), 10 App. Cas. 282, Australia. which turned on the validity of the Customs Regulation Act, 1879, of New South Wales, the Judicial Committee applied to Australia the constitutional law laid down as to India in *R. v. Burah*, and as to Canada in *Hodge v. R.* In *Att.-Gen. for Canada v. Cain and Gilhula* (1906), 22 Times L. R. 757, the rule laid down in *Hodge v. R.* was accepted and applied for the purpose of declaring *intra vires* the Alien Labour Laws of Canada, under which power was given to Canadian officials to deport certain classes of aliens, and for this purpose to exercise powers of extra-territorial constraint which are complementary to the internationally recognised power of a sovereign state to exclude or expel aliens from its territory (*m*).

4. The only express provisions in the imperial statute book with reference to the validity of colonial laws are contained in the Colonial Laws Validity Act, 1865. The material portions of that Act (which does not apply to India) are as follows:—

Sect. 1. "The term 'colony' shall in this Act include all of Her Majesty's possessions abroad in which there shall exist a legislature, as hereinafter defined, except the Channel Islands, the Isle of Man, and such territories as may for the time being be vested in Her Majesty under or by virtue of any Act of Parliament for the government of India:

"The terms 'legislature' and 'colonial legislature' shall severally signify the authority, other than the Imperial Parliament or Her Majesty in Council, competent to make laws for any colony:

"The term 'representative legislature' shall signify any colonial legislature which shall comprise a legislative body, of which one half are elected by inhabitants of the colony:

"The term 'colonial law' shall include laws made for any

The Colonial  
Laws Validity  
Act.  
28 & 29 Vict.  
c. 63.  
Colony.

(*m*) Cf. *Musgrove v. Chung Teeong Toy*, (1891) A. C. 272, as to the exclusion of Chinese from Victoria.

colony either by such legislature as aforesaid or by Her Majesty in Council:

“An Act of Parliament, or any provision thereof, shall, in construing this Act, be said to extend to any colony when it is made applicable to such colony by the express words or necessary intendment of any Act of Parliament:

“The term ‘governor’ shall mean the officer lawfully administering the government of any colony:

“The term ‘letters patent’ shall mean letters patent under the Great Seal of the United Kingdom of Great Britain and Ireland.”

Sect. 2. “Any colonial law which is or shall be in any respect repugnant to the provisions of any Act of Parliament extending to the colony to which such law may relate, or repugnant to any order or regulation made under authority of such Act of Parliament, or having in the colony the force and effect of such Act, shall be read subject to such Act, order, or regulation, and shall, to the extent of such repugnancy, but not otherwise, be and remain absolutely void and inoperative.”

This enactment does not interfere with the power of the colonial legislature to repeal as to the colony an imperial Act passed prior to the formation of the colony, not expressly enacted to extend to the colony, but held to form part of the law of the colony; but it does prevent the repeal of imperial statutes expressly applied to the colony, or Orders in Council under these Acts (*n*).

Sect. 3. “No colonial law shall be or be deemed to have been void or inoperative on the ground of repugnancy to the law of England, unless the same shall be repugnant to the provision of some such Act of Parliament, order, or regulation as aforesaid.”

In other words, the colonial legislature may pass valid laws repugnant to and directly or indirectly abrogating the common law or any statute which has been held to apply to the colony as part of the personal law of the colonists (*o*), and has not been expressly enacted by the Imperial Legislature to be applicable to the colony. The enactment excludes the application to colonial statutes of the criteria as to repugnancy which may be applied to bylaws or other statutory rules.

Sect. 4. “No colonial law passed with the concurrence of or assented to by the governor of any colony, or to be hereafter so passed or assented to, shall be or be deemed to have been void

(*n*) See the Canada Copyright Act, 1875 (38 & 39 Vict. c. 53, Imp.); *Smiles v. Belford* (1877), 1 Tupper (Up. Can. App.) 436.

(*o*) In *Harris v. Davies* (1885), 10 A. C. 279, it was held that the New South Wales Legislature had power to repeal sect. 6 of 21 Jac. 1, c. 16, as to costs in slander. In the same State a law was passed in 1904 to abrogate the English law as to prescription for ancient lights, which had been declared to apply to that State: see *ante*, p. 395.

or inoperative by reason only of any instructions (*p*) with reference to such law or the subject thereof which may have been given to such governor by or on behalf of Her Majesty, by any instrument other than the letters patent or instrument authorising such governor to concur in passing or to assent to laws for the 'peace, order, and good government' (*q*) of such colony even though such instructions may be referred to in such letters patent or last-mentioned instrument" (*p*).

Sect. 5. "Every colonial legislature shall have, and be deemed at all times to have had, full power within its jurisdiction to establish Courts of judicature, and to abolish and reconstitute the same, and to alter the constitution thereof, and to make provision for the administration of justice therein; and every representative legislature shall, in respect to the colony under its jurisdiction, have, and be deemed at all times to have had, full powers to make laws respecting the constitution, powers, and procedure of such legislature; provided that such laws shall have been passed in such manner and form as may from time to time be required by any Act of Parliament, letters patent, Order in Council, or colonial law for the time being in force in the said colony" (*r*).

A colonial Act or ordinance in certain cases, under the directions of an imperial statute (*s*), or under the letters patent instructing the governor (*t*), (i) may be reserved for the King's pleasure; or (ii) may be vetoed by the governor; or (iii) may be allowed by the governor with a suspensory clause; or (iv) may be subsequently disallowed by the King in Council, usually within a time limited by the instruments establishing the constitution (*s*).

Veto and  
disallowance.

In the first and third cases the statute does not come into force until the making of an Order in Council allowing it, or the lapse of the time limited for disallowance (*u*).

(*p*) The instructions contained in letters patent are collected in the Statutory Rules and Orders Revised (edit. 1904), under the title of the Colony concerned. As to these see Todd, *Parliamentary Government in Colonies* (2nd edit.), chap. iv., and the observations of Higginbotham, C.J., in *Chung Teeong Toy v. Musgrove* (1888), 14 Victoria L. R. 349, 371. In *McDonald v. Larkins* (1902), 22 N. Z. L. R. 668, a question arose as to the validity of a Colonial Act, the Shipping and Seamen's Act Amendment Act, 1896. This Act had not been suspended for the signification of His Majesty's pleasure, under sect. 736 of the Merchant Shipping Act, 1894, and was not disallowed within two years, under the Colonial Laws Validity Act, 1865.

(*q*) These words are used in Acts giving municipal corporations power to make bylaws.

(*r*) See *Fielding v. Thomas*, (1896) App. Cas. 600.

(*s*) *E.g.*, Commonwealth of Australia Constitutions Act, 1900 (63 & 64 Vict. c. 12), art. 74; and for form of reservation clauses, see sect. 9 and arts. 59, 60, 74.

(*t*) These are collected in the Statutory Rules and Orders Revised (edit. 1904), under the title of the Colony.

(*u*) Orders in Council sanctioning reserved Bills are printed in the Statutory Rules and Orders Revised (edit. 1904), under the title of the possession to which they relate.

In the second case the Bill never takes effect as an Act (*x*).

In the fourth case it would seem that the Act takes effect until publication of the Order disallowing it (*y*), but subject to any other objections open as to its validity.

In case of failure to reserve a colonial Act for the signification of the King's pleasure, doubts have been raised as to the validity of such Acts, which have rendered it necessary in certain cases to pass confirming Acts (*z*).

Territorial  
limitations of  
colonial  
legislation.

5. Colonial statutes, in one important respect, differ from imperial, in that they can have no extra-territorial effect even as to British subjects unless the power of extra-territorial legislation (*a*), or extra-territorial constraint, has been expressly or impliedly conceded to the colony by an imperial Act, or by Order in Council, charter, or proclamation. The New South Wales Act (46 Vict. No. 17), s. 54, made bigamy punishable in the colony "wheresoever the second marriage takes place." Macleod was indicted and convicted in New South Wales for bigamy, his first marriage having taken place in New South Wales and the second in Missouri. On appeal to the Privy Council, the statute was explained as applying only to bigamy committed in New South Wales. "If their lordships construe the statute as it stands and upon the bare words, any person married to any other person who marries a second time anywhere in the habitable globe is amenable to the criminal jurisdiction of New South Wales, if he can be caught in that colony. That seems to their lordships an impossible construction of the statute; the colony can have no such jurisdiction, and their lordships do not desire to attribute to the colonial legislature an effort to enlarge their jurisdiction to such an extent as would be inconsistent with the powers committed to a colony, and, indeed, inconsistent with the most familiar principles of international law. It therefore becomes necessary to search for limitations to see what would be the reasonable limitation to words so general." And after considering the limitations to be imposed in construing the enactment, the Court continued (at p. 458): "If the wider construction had been applied to the statute, and it was supposed that it was intended to comprehend cases so wide as those insisted on at the Bar, it would have been beyond the jurisdiction of the colony to enact such a law. Their jurisdiction is confined within their own territories, and the maxim which has more than once been quoted, *Extra territorium jus dicenti impune non paretur*, would be applicable

(*x*) This power of disallowance is equivalent to the exercise by procuration of the royal veto.

(*y*) *Clapper v. Lawrason* (1841), 6 Upp. Can. Q. B. (O. S.) 319.

(*z*) See 26 & 27 Vict. c. 84; 28 & 29 Vict. c. 63, s. 7 (South Australia); 56 & 57 Vict. c. 72 (Australian Colonies); 1 Edw. 7, c. 29 (Australian Colonies).

(*a*) See *Kingston v. Gadd* (1901), 27 Victoria L. R. 417, 429, 430, on the Australian Commonwealth Customs Act.



to such a case" (b). The construction adopted in this case was, *ut res magis valeat quam pereat*, to limit the operation of the statute to the territory of New South Wales, instead of declaring it wholly *ultra vires* and void, as upon the more obvious interpretation of its terms it clearly appeared to be (c). But there seems no constitutional objection to colonial legislation attaching in respect of persons doing certain acts outside the territory and afterwards coming within it (d). The validity of a Canadian law in similar form was considered in the *Bigamy case* (1897), 27 Canada, 461. Similar difficulties arose in *The Canadian Prisoners' case* (e), where a colonial legislature had made a pardon for treason conditional on banishment to a named place out of the colony, and serious questions arose in the course of transportation of the exiles to their place of banishment. And in *Att.-Gen. for Canada v. Cain and Gilhula* (1906), 22 T. L. R. 757, the Judicial Committee had to consider whether the Dominion Parliament had, constitutionally, power to impose extra-territorial restraint for the purpose of making effectual a statute for preventing the importation of alien contract labour. In *Harrison v. McGrath* (1903), 22 N. Z. L. R. 676, it was held that the New Zealand Gaming and Lotteries Act of 1881 could apply only to lotteries in New Zealand. In *Re Coutts* (1902), 22 N. Z. L. R. 203, the question was raised but not decided whether a colonial legislature can make a law rendering residence abroad an offence.

It has not been judicially determined whether the Territorial Waters Jurisdiction Act, 1878, operates to empower a colonial legislature to legislate for its territorial waters (f).

It has also been necessary to consider this territorial limitation in deciding questions which have arisen as to the property to be treated as subject to a colonial Act imposing death duties. Ordinarily such Acts are read as applying only to assets to which the colonial probate would give title to executors or successors, or to assets within the colony (g). And the imperial Acts on the subject do not authorise any proceedings to charge death duties on any property while situated in a British possession, or proceed for their recovery in British possessions (h).

(b) *Macleod v. Att.-Gen. for New South Wales*, (1891) App. Cas. 457, Halsbury, L.C. See *Phillips v. Eyre* (1869), L. R. 4 Q. B. 225; 6 Q. B. 1; *Sirdar Gurdial Singh v. Rajah of Faridkote*, (1894) App. Cas. 670.

(c) As to veto on attempts at extra-territorial legislation, see Todd, *Parliamentary Government in Colonies* (2nd edit.), 175; Lefroy, *Legislative Power in Canada*, p. 338, n.

(d) *Kingston v. Gadd* (1901), 27 Victoria L. R. 417.

(e) (1839), 3 St. Tr. (N. S.) 963.

(f) See Jenkyns, *British Rule, &c. beyond the Seas*, p. 12, n.

(g) *Blackwood v. Reg.* (1883), 8 App. Cas. 82; *Walsh v. Reg.*, (1894) App. Cas. 144; *Henty v. Reg.*, (1896) App. Cas. 567; *Harding v. Commissioners of Stamps*, (1898) App. Cas. 763, 773, and *ante*, p. 374.

(h) *Finance Act*, 1894 (57 & 58 Vict. c. 30), s. 20.

In *Blackwood v. R.* (1883), 8 App. Cas. 82, it was decided that "personal estate" in the New South Wales Stamp Duties Act of 1880, s. 16, must be read as limited to such estate as the colonial grant of probate conferred jurisdiction to administer—*i.e.*, to *bona notabilia* within the colony, as to which alone, by virtue of the Charter of Justice granted under 4 Geo. 4, c. 96, the Supreme Court of the Colony can grant probate (*i*).

Prerogative.

6. The question has been raised whether a legislative body in British India or in a colony has power by legislation to affect the prerogative of the Crown. This question so far as concerns the Madras Legislature is very fully discussed in *Bell v. Madras City Municipal Commrs.* (1901), 25 Madras, 457 (*j*). It would seem to flow from the decision in *Att.-Gen. of Canada v. Cain and Gilhula* (1906), 22 T. L. R. 757, that any power or prerogative of the Crown may be delegated or transferred "to the governor or the government of one of the colonies, either by a Royal Proclamation which has the force of a statute (*Campbell v. Hall* (1775), 1 Cowper, 204), or by a statute of the Imperial Parliament, or by the statute of a local Parliament to which the Crown has assented. If this delegation has taken place, the depositary or depositaries of the executive and legislative powers and authority of the Crown can exercise those powers and that authority to the extent delegated as effectively as the Crown could itself have exercised them" (*k*). But as to each possession it is necessary to examine the relevant statutes, orders, &c., to see whether the particular prerogative has been surrendered, delegated, or put within the legislative control of the local legislature.

Possessions  
having  
central and  
local legis-  
latures.

7. The task of the judiciary in dealing with colonial legislation is further complicated in the case of colonies or possessions having more than one legislature.

In the case of India, Canada and Australia there are both central and local legislatures; and the Courts may have to determine the constitutional limits of the powers of such bodies, whether *inter se* or under the imperial constitution which created them. And in these cases there is already growing up a body of judicial decisions on the validity of statutes passed by the central legislatures of each of these possessions and of its constituent states and provinces, which resembles that already existing in the United States.

India.

The legislatures of India are created by a series of statutes and charters collected in Ilbert's Government of India (*l*). The

(*i*) See *ante*, p. 374.

(*j*) Bhashyam Ayyangar, J., there differed from the view expressed in Ilbert, Government of India, pp. 223, 226. Cf. *Hari v. Secretary of State for India* (1903), 27 Bombay, 425.

(*k*) The following cases were cited as establishing these propositions:—*In re Adam*, 1 Moo. P. C. 460, 472–476; *Donegani v. Donegani* (1835), 3 Knapp, 63, 88; *Cameron v. Kyte* (1837), 3 Knapp, 332, 343; *Jephson v. Riera* (1835), 3 Knapp, 130, St. Tr. (N. S.) 591.

(*l*) Oxford, 1898. See also Chalmers.

constitutional effect of this legislation is stated in *R. v. Burah* (*m*).

Cases are not numerous in which the validity of Indian legislation has come in question; and the only important question which has arisen is as to the extent of the powers of the Viceroy's Council, or a Provincial Council, to affect the prerogative of the Crown by legislation. This question has been very fully considered by the High Court of Madras in *Bell v. Madras City Commissioners* (1902), 25 Madras, 457, where the question in debate was whether a Madras Act authorising the levy of certain tolls authorised the levy of tolls as goods the property of the Crown and was valid. In that case Bhashyam Ayyangar, J., in affirming the validity of the Act, examined exhaustively the constitution of the Madras Council, the decisions on the constitutional points raised, and the history of Indian legislation on the subject (*n*).

The general principle established is that no Indian Legislature can override the Imperial Acts from which its authority is derived, or such Acts specifically relating to India; and that the powers of the local legislatures are governed by the Indian Councils Acts of 1861 and 1892 (*m*).

Doubts as to the validity of certain Indian laws are from time to time removed by Acts of the Imperial Parliament and the Viceroy's Legislative Council (*o*).

Canada and Australia differ from India in possessing Federal Constitutions.

Under the British North America Acts, 1867 to 1886 (*p*), Canada. questions have often arisen as to whether the federal and provincial Parliaments have exceeded their powers, or encroached on each other's functions. The decisions of the Canadian Courts (*q*) and of the Privy Council up to 1898 are collected in Lefroy's *Legislative Power in Canada*: Toronto, 1898 (*r*). Their character may be indicated by the following examples taken from decisions since 1898.

In *Union Colliery Co. of British Columbia v. Bryden*, (1899) App. Cas. 580, the Judicial Committee held that sect. 4 of the British Columbia Coal Mines Regulation Act, 1890, prohibiting adult Chinamen from working in underground coal workings,

(*m*) *Ante*, p. 404.

(*n*) The decision is not wholly in accord with the views expressed by Sir C. Ilbert, *Government of India*, pp. 223, 226.

(*m*) This subject is fully discussed by Jenkins, C.J., in *Hari v. Secretary of State for India* (1903), 27 Bombay, 425, 440.

(*o*) See Ilbert, *Government of India*, 226.

(*p*) See Appendix B, *post*.

(*q*) As to giving leave to appeal from the Supreme Court of Canada, see *Olergue v. Murray*, (1903) A. C. 521. As to the power of reference by the executive of Canada to the Supreme Court of Canada of questions as to the validity of legislation, see *Re Ontario Sunday Rest Bill* (1905), 35 Canada, 581; *Att.-Gen. for Ontario v. Hamilton Street Rail. Co.*, (1903) App. Cas. 524.

(*r*) See especially *Fielding v. Thomas*, (1896) App. Cas. 600.

was invalid, as being beyond the powers of the provincial legislature, and as trenching on the exclusive power of the Dominion Parliament to legislate as to naturalization and aliens. In *Madden v. Nelson and Fort Sheppard Rail. Co.*, (1899) App. Cas. 626, statutes of the same province imposing a liability on a Dominion railway company were declared *ultra vires* as encroaching on a field of legislation wholly withdrawn from the provincial legislature. In *Toronto Corporation v. Bell Telephone Co. for Canada*, (1905) App. Cas. 52, a statute of Ontario, authorising a telephone company, with the leave of the corporation, to lay cables, &c. in the streets of Toronto, was held *ultra vires*, because the company had, under a Dominion Act, power to lay the cables without such consent, and being constituted to carry on business in more than one province, was a company for which the federal Parliament was exclusively competent to legislate (s). And in *Att.-Gen. for Ontario v. Hamilton Street Rail. Co.*, (1903) App. Cas. 524, a Lord's Day Act (t) of the same province was declared *ultra vires* as encroaching on the exclusive powers of the Dominion Parliament with respect to criminal law (u). In *Att.-Gen. of Manitoba v. Manitoba Licence Holders' Association*, (1902) App. Cas. 73, the Liquor Act of 1900 of Manitoba for suppressing liquor traffic in the province was held to be valid, its subject being and being dealt with as a matter of a merely local nature in the province (x), although in its practical working it must interfere with Dominion revenue in the province and business operations outside the province. In *Att.-Gen. for British Columbia v. Canadian Pacific Rail. Co.*, (1906) A. C. 206, the Judicial Committee held that under the British North America Act, 1867, ss. 91, 108, the Dominion Parliament had authority to authorise the use of provincial Crown lands by an inter-colonial railway company for the purposes of its railway, and for this purpose to interfere with access to the foreshore adjacent to a harbour in British Columbia.

In *Att.-Gen. of Canada v. Cain and Gilhula* (1906), 22 T. L. R. 757, the Judicial Committee declared valid sect. 6 of the Alien Labour Act of the Dominion, which authorised the charging on the owner of a ship importing an alien who had been landed contrary to the Act the expenses of his custody and return to the place from which the alien came within one year of his landing (y).

The Commonwealth of Australia Constitution Act, 1900 (z), has been so recently set at work that few decisions have yet been given thereon. Under Article 74 no appeal lies to the Judicial Committee of the High Court of Australia from a deci-

Australia.  
63 & 64 Vict.  
c. 12.

(s) Sect. 92 (10) of the B. N. A. Act, 1867.

(t) Revised Statutes, Ontario, 1897, c. 246.

(u) Sect. 91 (27) of the B. N. A. Act, 1867.

(x) B. N. A. Act, 1867, s. 92 (16).

(y) The Canadian Courts had declared the section *ultra vires*.

(z) See hereon Garrahan and Quicke, Constitution of Australian Commonwealth.

sion (except on a certificate of the latter Court) upon any question howsoever arising as to the limits *inter se* of the constitutional powers of the Commonwealth and those of any state or states, or as to the limits *inter se* of the constitutional powers of any two or more states (*a*). The Judicial Committee has under consideration the question whether an appeal from a State Court may be admitted which raises any of the questions of constitutional powers referred to in Article 74, *e.g.*, by challenging a decision of the High Court of Australia on such questions (*b*). Article 74 is not expressed so as to deal with the *absolute* limits of a state constitution, but only with the limits *inter se* of the constitutional powers of two or more states.

In *Colonial Sugar Refining Co. v. Irving*, (1905) A. C. 369, it was held that the right of appeal given to the King in Council by the Order in Council of 30th June, 1860, was not taken away by sect. 39 of the Australian Commonwealth Judiciary Act (No. 6) of 1903, which purports to take away the right of appeal from the Queensland Supreme Court to the Privy Council (*c*), on the ground that this statute was not retrospective, and could not affect such right of appeal in suits instituted before the commencement of the Act. It was not decided whether the clause in question was within the powers of the Commonwealth Parliament. (*Vide* p. 372.) In *Outtrim's case* (1906) the Judicial Committee has under consideration the question whether an Australian State Legislature can impose income tax on the income of Ministers of the Commonwealth. The High Court of Australia has held that such legislation is *ultra vires* (*d*). It has been decided that where a litigant who has the option of appealing direct from a State Court to the King in Council, or of appealing to the High Court of Australia, elects for the latter course, the Judicial Committee will not, save in a very exceptional case, give him special leave to appeal from the Commonwealth Court (*e*).

8. In *D'Emden v. Pedder* (1904), 1 Australia C. L. R. 91, it was laid down by the High Court that where the Constitution Act contained provisions undistinguishable in substance, though varied in form, from provisions of the United States, which had received judicial interpretation by the Supreme Court of the United States, it was proper to consult and to treat as a welcome aid, but not as an infallible guide, the relevant decision of that Court. In that case the High Court followed a judgment of

Rules for the interpretation of a written constitution.

(*a*) The unquoted portion of this article contains other constitutional provisions not here directly relevant.

(*b*) *Outtrim's case* (1906), not yet reported.

(*c*) Given by Order in Council of 30th June, 1860. Statutory Rules and Orders Revised (1904), tit. "Queensland."

(*d*) *Deakin v. Webb* (1904), 1 Australia C. L. R. 585; *cf. Re Income Tax Acts* (No. 4) (1904), 29 Vict. L. R. 748.

(*e*) *Victorian Railway Commissioners v. Brown*, (1906) A. C. 331.

Marshall, C.J., in *McCulloch v. Maryland* (1819), 4 Wheat. U. S. 316, on the fundamental relations between the American Union and its constituent states. In *Bank of Toronto v. Lambe* (1887), 12 A. C. 575, on the construction of the British North America Act, 1867, the Judicial Committee admitted the value and authority of *McCulloch's case*, but considered that it threw no light on the question there raised, whether certain taxation was direct taxation.

In the case of the British North America Act, 1867, it has been suggested that as the Act was founded on resolutions passed at Quebec by delegates of the subsequently federated colonies, terms adopted textually therefrom should be interpreted by the light of Canadian legislation up to that date, so as to determine the meaning of municipal institutions in sect. 91 of the Act; but the Judicial Committee, while examining the prior legislation on the particular subject-matter in question before them, appear to have considered the legislation of the federated provinces too diverse in its treatment of municipal institutions to justify the mode of interpretation proposed (*f*).

The constitution of the Australian Commonwealth has been construed as an Act of Parliament, which it is, and not by reference to theories of abstract justice or of policy; but in such interpretation it may be necessary to keep in mind that it is not a code going into minute detail as to the means by which federation is to be carried into effect by the legislature which it creates (*g*). And the High Court of Australia has declined to permit reference to debates in the constitutional conventions which resulted in the preparation of the draft constitution submitted for the approval of the Imperial Parliament, holding that these debates could not be prayed in aid in the interpretation of the constitution (*h*). The same rule has been applied in Canada (*i*). But in Australia reference has been allowed, as a matter of the history of legislation, to the draft bills prepared under the legislative authority of the several states as an aid to the constitution (*k*).

In *D'Emden v. Pedder* (1904), 1 Australia C. L. R. 91, 109 (*l*), it has been laid down with reference to the Commonwealth constitution—

1. That the Commonwealth and the states are, with respect to the matters which under the constitution are within the

(*f*) *Att.-Gen. for Ontario v. Att.-Gen. for Canada*, (1896) A. C. 348, 351.

(*g*) *Tasmania v. Commonwealth* (1904), 1 Australia C. L. R. 329, 339.

(*h*) *Sydney Municipal Council v. Commonwealth* (1904), 1 Australia C. L. R. 208, 213. See *ante*, p. 122.

(*i*) *Gosselin v. R.* (1903), 33 Canada S. C. 255. See *ante*, p. 123.

(*k*) *Tasmania v. Commonwealth and Victoria* (1904), 1 Australia C. L. R. 329, 350, Barton, J.

(*l*) The case turned on a Tasmanian statute authorising levy of a tax on receipts given by Commonwealth officers for their salaries.

ambit of their respective legislative or executive authority, sovereign states, subject only to the restrictions imposed by the imperial connection and the provisions of the constitution, whether express or implied. (See Article 51 of the constitution.) This is in accordance with what had been laid down in *Powell v. Apollo Candle Co.* (1885), 10 App. Cas. 282, as to the New South Wales constitution.

2. That consequently where the constitution grants legislative or executive power to the Commonwealth, it may be exercised in absolute freedom, and without any interference or control whatever, except that prescribed by the constitution.

3. That as a further consequence, any attempt by a state to give to its legislative or executive authority one operation which, if valid, interferes to the smallest extent with the free exercise of the legislative or executive power of the Commonwealth, the attempt, unless expressly authorised by the constitution, is invalid.

4. That general words in a state Act should, where possible, be construed so that the application of the Act may not infringe the Commonwealth constitution.

In *Colonial Sugar Refining Co. v. Irwing*, (1906) A. C. 360, it was held by the Judicial Committee that the Commonwealth Excise Tariff Act of 1902 (No. 11), did not exceed the legislative powers given by sect. 90 of the Commonwealth Constitution Act, 1900 (63 & 64 Vict. c. 12), by imposing uniform excise duties before uniform customs duties had been imposed, and that an exemption contained in sect. 5 of the Tariff Act, which gave an exemption in respect of goods on which customs or excise duties had been paid before 8th October, 1901, was not such a discrimination between different states of the Commonwealth as is forbidden by sect. 51 of the Constitution Act.

In *Davies v. Western Australia* (1904), 2 Australia C. L. R. 29, the Administration Act (1903, No. 13) of Western Australia was unsuccessfully challenged as invalid for discriminating between *bonâ fide* residents of, and domiciled in, Western Australia, and residents in other states of the Commonwealth. (See Constitution, Article 117.)

In *Kingston v. Gadd* (1902), 27 Vict. L. R. 417, it was held by the Supreme Court of Victoria that it would not assume that the provisions of a Commonwealth Act were *intra vires*, but would inquire into their validity by reference to the constitution, and that unless they were made under the constitution (*m*) they had no binding effect on the judges or people of any state, even where they did not encroach on state legislative powers. But in the particular case the Court held sect. 192 of the Commonwealth Customs Act (No. 6 of 1901) to be valid.

(*m*) See Art. 5.

<sup>s</sup> Interpretation of state Acts by federal Courts. ¶

In *Bond v. Commonwealth of Australia* (1903), 1 Australia C. L. R. 13, 23, Griffith, C.J., intimated that the High Court of Australia would be reluctant, as a general rule, to put a different construction upon the statutes of a state from that which the Supreme Court of a state had declared to be their true construction, unless its decision is directly invited by way of appeal, either from the same Court or from the Court of another state, on a case involving the construction of identical words.



## CHAPTER X.

## MISTAKES IN STATUTES.

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1. [THERE are numerous mistakes in reference and mistakes of all kinds in Acts of Parliament (*a*), due either to the draftsman or the printer (*b*)], or to the conjoint or adverse efforts of the two Houses of Parliament. [The draftsman may mistake facts or may erroneously assume the law on any particular subject to be different from what it really is (*c*); and the printer may incorrectly reproduce the draftsman's manuscript, or mistakes may creep into a Bill during its passage through Parliament.]

Part I. of the first schedule to the Conveyancing and Law of Property Act, 1881, headed "Acts affected," and comprising a list of nine statutes relating to searches for judgments, Crown debts, &c., was referred to in sect. 5 of the Bill as originally drawn. That section failed to become law upon the passing of the Act, and the schedule of "Acts affected," which depended upon that section, although retained, is apparently in no way connected with the Act as it now stands. The mistake was corrected by sect. 2 of the Conveyancing Act, 1882 (45 & 46 Vict. c. 39) (*d*).

(*a*) See Parl. Pap. 1875—C—No. 208, p. 48; 32 & 33 Vict. c. 19, s. 4, refers to 6 & 7 Vict. c. 106, in error for 6 & 7 Will. 4, c. 106.

(*b*) "The ancient system of engrossing all Bills upon parchment after the report was discontinued in 1849, when both Houses agreed to substitute Bills printed on vellum by the King's printer for the parchment rolls": May. Parl. Pract. (10th ed.) p. 471. "The original authenticated vellum prints are preserved in the House of Lords, and . . . copies of the Act, printed by the King's printer, are referred to as evidence in Courts of law. The original prints may also be seen when necessary, and copies taken." *Ibid.* p. 486.

(*c*) *Vide ante*, p. 25.

(*d*) The schedule itself was repealed in 1894 (57 & 58 Vict. c. 56).

The 'converse case occurred in the Artisans and Labourers' Dwellings Act, 1879 (42 & 43 Vict. c. 64), where sect. 22, sub-sect. 3, provided that loans for the purposes of the Act should be secured by a mortgage "in the form set forth in the third schedule hereto." There was no third schedule appended to the Act, and it was necessary to pass a supplementary Act of Parliament (43 Vict. c. 8), declaring that those words had been "inserted by mistake," and that the section should be construed and read as if those "words had not been inserted therein" (e).

Mistakes not  
to be as-  
sumed.

In *Richards v. McBride* (1881), 8 Q. B. D. 119, 122, Grove, J., in rejecting the meaning sought to be put upon a statute on behalf of the respondent, said: "No one, in construing a statute or any other literary production, could put such a construction upon the words unless by supposing they were a mistake. But we cannot assume a mistake in an Act of Parliament. If we did so, we should render many Acts uncertain by putting different constructions on them according to our individual conjectures. The draftsman of the Act may have made a mistake. If so, the remedy is for the Legislature to amend it."

Reference to  
original Acts.

Doubts as to the accuracy of the King's printer's copies of statutes are settled so far as possible by reference to the original Acts or vellum prints, which are usually treated as conclusive (f). In *Re Nott* (1843), 4 Q. B. 768, 776, it was doubted whether the word "amend" in the printed copies of 11 Geo. 4 & 1 Will. 4, c. 70, s. 9, was not an error. The Parliament roll was therefore examined and the print was found to be correct. In *R. v. Haslingfield* (1874), L. R. 9 Q. B. 203, 209, Quain, J., said: "What the expression 'collecting' in sect. 60 [of 7 & 8 Vict. c. 101] refers to I confess I am at a loss to understand. It would seem probable it was a mistake, and that it should have been 'correcting,' but we have referred to the Parliament roll of the statute, and there the word is 'collecting'" (g).

Facts stated  
in preamble  
of a statute  
may be con-  
verted.

2. [With regard to an averment in the preamble of a statute, Lord Coke says (on Littleton, bk. 1, 19 b): "By the authority of our author the rehearsal or preamble of a statute is to be taken for truth, for it cannot be thought that a statute that is made by authority of the whole realm, as well as of the King and of the Lords spiritual and temporal, and of all the Commons, will recite a thing against the truth." But this proposition is too wide to be accepted as correct at the present day], and from the case of *Leicester v. Haydon* (1572), Plowd. 398 (cited in *Stead v. Carey* (1845), 14 L. J. C. P. 182), it would appear doubtful whether the proposition was not too wide at the time it was made. [It is clear that a recital in an

(e) And see *Jamaica Rail. Co. v. Att.-Gen.*, (1893) A. C. 127.

(f) *Vide ante*, pp. 63 *et seq.*

(g) *Qy.* "collating."

Act of Parliament may be used as evidence, but it is not conclusive evidence, and it is liable to be rebutted (*h*).]

But the erroneous declarations of the Legislature, though historically inconclusive as to the past, may create law as to the future, or may be prospectively, though not retrospectively, conclusive (*i*).

In *Merttens v. Hill*, (1901) 1 Ch. 842, 852, Cozens-Hardy, J., said: "A mere recital in a local and personal Act of Parliament, though admissible against persons claiming under the Act, is not conclusive, and the Court is at liberty to consider the fact or the law to be different from the statement in the recital" (*k*). [And in *R. v. Haughton* (1852), 22 L. J. M. C. 89, Lord Campbell said: "A recital in a private Act is not conclusive either in law or in fact, and this recital is merely evidence of the road being in Denton, and is therefore inadmissible against an estoppel." And in his judgment he added: "Had there been anything amounting to an enactment that the road should be considered in Denton, that would have prevailed over the estoppel, but a mere recital in an Act of Parliament either of fact or law is not conclusive, and we are at liberty to consider the fact or the law to be different to the statement in the recital" (*l*). And in the *Wharton Peerage Claim* (1844), 12 Cl. & F. 295, in order to prove the relationship existing between different members of a certain family so as to substantiate part of the pedigree, a private Act of Parliament describing the relationship was offered in evidence. Upon this the Lord Chancellor said: "It is very strong evidence, for it is the well-known practice of this House not to allow the insertion of such a statement in the recitals of a private Act unless the truth of that statement has been previously proved to the satisfaction of the judges to whom the Bill was referred" (*m*).]

Immaterial whether statute be a public or private Act.

3. "That, in fact, the language of an Act of Parliament may be founded on some mistake, and that words may be clumsily

Incorrect statement of law.

(*h*) *Vide ante*, pp. 183—189. In *Dwyer v. Port Arthur* (1893), 22 Canada, 241, an erroneous recital was held to be ineffective.

(*i*) "Even if it could be proved that the Legislature was deceived, it would not be competent for a Court of law to disregard its enactments. If a mistake has been made the Legislature alone can correct it": *Labrador Co. v. R.*, (1893) A. C. 123.

(*k*) See *Duke of Beaufort v. Smith* (1849), 4 Ex. 470, Parke, B. "You cannot say," said Willes, J., in *Mills v. Mayor of Colchester* (1867), 36 L. J. C. P. 214, "the statute cannot be looked to, but . . . that what is stated in the statute is not to be taken as a proof of any matter of fact or law." See also Taylor on Evidence (10th ed.), s. 1660.

(*l*) In *Edinburgh and Glasgow Rail. Co. v. Linlithgow* (1860), 3 Macq. H. L. (Sc.) 704, the Lord C. . . . (Lord Campbell) said: "The recitals in a statute cannot bind those who are not within the enacting part." For decisions in the American Courts to the same effect see Sedgwick, Statutory Law (2nd ed.), 44.

(*m*) In the *Shrewsbury Peerage claim* (1857), 7 H. L. C. at p. 13, Lord St. Leonards said: "That used to be the practice, but it is not so now." The evidence in support of private Bills is not now submitted to and reported on by the judges, and future recitals will not therefore be evidence." The practice only applied to private estate Bills: see 2 Clifford, 769.

used, I do not deny. But I do not think it is competent to any Court to proceed upon the assumption that the Legislature has made a mistake. Whatever the real fact may be, I think a Court of law is bound to proceed upon the assumption that the Legislature is an ideal person that does not make mistakes" (u).

"We ought in general," said Lord Blackburn in *Young v. Mayor, &c., of Leamington* (1883), 8 App. Cas. 526, "in construing an Act of Parliament, to assume that the Legislature knows the existing state of the law" (o). In other words, it is presumed that the Legislature has informed itself as to the state of the law on any subject as to which it undertakes to legislate; for example, if the Legislature amends a statute which has received a judicial interpretation, it is presumed that the Legislature was acquainted with that interpretation at the time it amended the statute (p). [Thus, in *Mulcahy v. R.* (1868), L. R. 3 H. L. 306, at p. 319, the judges said of the Treason Act, 1796 (36 Geo. 3, c. 7), "that statute did in terms sanction and embody the received interpretation of the Statute of Treasons (25 Ed. 3, stat. 5, c. 2), with which it must be presumed that the Legislature was acquainted, and which it left undisturbed." But if it appears from the wording of an Act of Parliament that the Legislature was under some misapprehension as to the state of the law on a particular subject, such a misapprehension "would not," as was said by Cockburn, C.J., in *Earl of Shrewsbury v. Scott* (1859), 29 L. J. C. P. 53, "have the effect of making that the law which the Legislature had erroneously assumed it to be." Thus, in *Molico, March & Co. v. Court of Wards* (1872), L. R. 4 P. C. 419, 437, the Judicial Committee said: "Some reliance was placed on the 28 & 29 Vict. c. 86, s. 1, which enacts that the advance of money to a firm upon a contract that the lender should receive a rate of interest varying with the profits, or a share of the profits, shall not of itself constitute the lender a partner, or render him responsible as such. It was argued that this raised an implication that the lender was so responsible by the law existing before the passing of the Act. The enactment is no doubt entitled to great weight as evidence of the law, but it is by no means conclusive, and when the existing law is shown to be different from that which the Legislature supposed it to be, the implication arising from the statute cannot operate as a negation of its existence" (q).]

(u) *Income Tax Commissioners v. Pemsel*, (1891) A. C. 549, Halsbury, L.C.; and see *ante*, p. 418.

(o) See also *R. v. Watford* (1846), 9 Q. B. 626, at p. 635, Denman, L.C.J.

(p) This is so even in technical matters, such as "the difference between the existing courses of practice in Bankruptcy and in Chancery;" *Kellock's case* (1868), 3 Ch. App. 781, Selwyn, L.J.

(q) [The following dicta also bear out this principle. In *Ex parte Lloyd* (1851), 1 Sim. N. S. 250, Lord Cranworth, V.-C., said: "The Legislature . . . are not interpreters of the law, and Courts of justice are not bound by a mistake of the Legislature as to what the existing law is." In *Metcalfe v. Hanson*

[At the same time it must be borne in mind that if we find a rule of law enunciated in the preamble to a statute, or if it appears from the language of the statute that the Legislature has acted upon the idea that such a rule existed, it is very strong evidence of what the law on the subject actually is, and, as was said by Lord Campbell in *R. v. Treasury* (1851), 20 L. J. Q. B. 312, "the burden of proving that the Legislature has fallen into a mistake is cast upon those who say so." Also, a rule of law may be sometimes found so distinctly recognised in a statutory enactment that to deny the existence of the rule of law would be in fact to abrogate the statute. Thus, in *Norton v. Spooner* (1854), 9 Moore, P. C. 103, it was argued that an action for damages for *crim. con.* would not lie by the Roman Dutch law prevailing in British Guiana. But it appeared that by a legislative Act of the colony, No. 22 of 1844, it was enacted that "whenever any action shall be brought . . . to procure reparation for pecuniary damages . . . for criminal conversation with any wife," certain formalities therein prescribed shall be observed as to the trial of such an action before a judge and jury of twelve men. "Their lordships quite agree," said the Judicial Committee, "that the main object of this ordinance was to introduce and regulate the trial by jury, but when an Act of the Legislature declares that an action for a particular wrong shall be tried in a particular way . . . it appears to their lordships that it would be no less than monstrous to say that a cause of action thus recognised and provided for shall be treated as no cause of action at all. This goes far beyond a recital in an Act of legislation, which may . . . be often not conclusive. This is an express and distinct enactment, that if an action be brought for such a cause as that now under consideration . . . such and such shall be the consequences" (v).]

Enunciation in a statute of a proposition of law is strong evidence of what the law really is.

4. [As a general rule (s) a Court of law is not authorised to supply a *casus omissus*, or to alter the language of a statute for the purpose of supplying a meaning, if the language used in the statute is incapable of one, even though they may be of opinion

Obvious misprint in a statute may be corrected.

(1866), L. R. 1 H. L. 250, Lord Cranworth said: "No doubt the Legislature may have mistaken the law as to the effect of the former statute." In *U. v. Houghton* (1853), 22 L. J. M. C. 89, 92, Lord Campbell said: "A mere recital in an Act of Parliament, either of fact or of law, is not conclusive, and we are at liberty to consider the fact or the law to be different from the statement in the recital." This dictum was cited by Lord Chelmsford in *Mersey Docks v. Cameron* (1865), 11 H. L. C. 443, 518. In *Cambridge University v. Bryer* (1812), 16 East, 317, 326, Le Blanc, J., said as follows: "If the Court are clear in their construction of an Act, they are bound to give effect to that construction, although they should be of opinion that an erroneous construction has been put upon it by other Acts." In *Sewell v. Burdick* (1885), 10 App. Cas. 105, Lord Bramwell pointed out two statements of law in the preamble of a statute which were, in his opinion, inaccurate.

(v) As to error in transcribing a statute, see *Yorke's case* (1888), 15 Ont. Rep. 625, 629.

(s) *Ante*, p. 71.

that a mistake has been made in drawing the Act (t).] “Whether,” said Jessel, M.R., in *Laird v. Briggs* (1881), 19 Ch. D. 33, “we can alter the word ‘convenient’ in s. 8 of 2 & 3 Will. 4, c. 71, by putting in the word ‘easement’ instead, is a question of very considerable difficulty. A judge may take the view that sect. 8, as it stands, is so absurd that the word ‘convenient’ cannot stand there; but that does not quite conclude the question as to whether you can insert another word. All I wish to say is, that I think the question is open for discussion.” In *Lyde v. Barnard* (1836), 1 M. & W. 101, 123, Lord Abinger said that the word “upon,” in 9 Geo. 4, c. 14, s. 6, “must be rejected as nonsensical;” but Parke, B., at p. 115, after observing that “the words of the clause were clearly inaccurate, probably through a mistake in the transcriber into the Parliamentary Roll,” added, “We must make an alteration in order to complete the sense, and must either transpose some words or interpolate others.” [Thus, in *Green v. Wood* (1845), 7 Q. B. 178, it was suggested that the words in 3 Geo. 4, c. 39, s. 2, “unless judgment shall have been signed or execution issued,” should be read “unless judgment shall have been signed and execution levied,” because the last three words, as they stood, were incapable of a meaning. “To give an effectual meaning,” said Lord Denman, C.J., “we must alter not only ‘or’ into ‘and,’ but ‘issued’ into ‘levied.’ It is extremely probable that this would express what the Legislature meant. But we cannot do this.” And Patteson, J., added: “It is clear to my mind that some mistake has occurred in drawing this Act . . . But I do not think we should be justified in making the alterations contended for. It is best to say that the words have no meaning at all.” But if there is an obvious misprint in an Act of Parliament the Courts will not be bound by the letter of the Act, but will take care that its plain meaning is carried out. “It is our duty,” said Tindal, C.J., in *Everett v. Wells* (1841), 2 M. & G. 269, 277, “neither to add to nor to take away from a statute, unless we see good grounds for thinking that the Legislature intended something which it has failed precisely to express.” Thus, in *The Chancellor of Oxford v. Bishop of Coventry* (1615), 10 Co. Rep. 57 b, it was resolved that “when the description of a corporation in an Act of Parliament is such that the true corporation intended is apparent . . . though the name of the corporation is not precisely followed, yet the Act of Parliament shall take effect.” So in *R. v. Wilcock* (1845), 7 Q. B. 317, 321, at p. 338, Lord Denman, C.J., said: “The question is whether the Act of 17 Geo. 3, c. 56, was repealed by 58 Geo. 3, c. 51,

(t) [A curious mistake was made in the Customs Consolidation Act, 1876 (39 & 40 Vict. c. 36), for in sect. 268 it is enacted that no action shall be commenced against a coastguard officer until one month next after notice in writing, but in sect. 272 it is enacted that “every action against such officer shall be commenced within one month.”]

which repeals 'an Act passed in the 13th year of' Geo. III., entitled 'an Act for,' &c., and here is set out the title of 17 Geo. 3, c. 56, not that of any Act passed in the 13th year of Geo. III., nor, as we presume, of any other Act whatever. A mistake has been committed by the Legislature; but having regard to the subject-matter, and looking to the mere contents of the Act itself, we cannot doubt that the intention was to repeal the Act of 17 Geo. 3, and that the incorrect year must be rejected" (u).]

When the Royal assent is given by commission, the Bills to which the assent is to apply are specified in the commission by the statutory short titles given to them by clauses in the Bills. The effect of this appears to be that any error in the print of an Act so assented to can on discovery be corrected at any time, inasmuch as what is assented to is not a particular written or printed paper, but the Bill, the whole Bill, and nothing but the Bill; and if the statute is printed and circulated from any copy other than that which has passed between the Houses, the error can be set right. The first print issued of the Education Act, 1891, was withdrawn, and a new print issued. The competence of public officials to take this step depends on a question of fact, viz., whether the first issue was or was not printed from the proper copy. The printers and officials clearly have no power to alter in any way the copy assented to, and it is for the judges, or in the last resort for the Legislature, to correct the error.

Correction by officials of errors in Acts.

54 & 55 Vict. c. 56.

[An evidently accidental omission in the schedule to an Act may be supplied. Thus, in *R. v. Strachan* (1872), L. R. 7 Q. B. 465, it appeared that by 33 & 34 Vict. c. 97, sch., *sub tit.* Voting Paper, "any instrument for the purpose of voting by any person entitled to vote at any meeting" was to be stamped with a 1*d.* stamp. It was argued that the expression "at any meeting" included the assembling of the town council to elect aldermen, and that, consequently, all voting papers used at such elections must be stamped. But the Court held otherwise, on the ground that it could never have been the intention of the Legislature by such an enactment as this to alter the whole system of voting at public elections. "We must take it," said Cockburn, C.J., "that this schedule having been alphabetically arranged, instead of as in the former Act, there has been an *accidental omission* of some words of reference, such as the word 'such.'"]

Accidental omission in schedule may be corrected.

[In the United States a different rule seems to be applied with regard to clerical errors in statutes. In 1872 an Act of Congress was passed which contained a clause exempting from

Otherwise in America.

(u) Similarly with regard to an obvious mistake in a will, Lord Brougham said in *Langston v. Langston* (1834), 2 Cl. & F. 194, 240: "Anyone who reads this will cannot doubt that some mistake must have happened, and that is a legitimate ground in construing an instrument, because that is a reason derived, not *dehors* the instrument, but one for which you have not to travel from the four corners of the instrument itself."

the 20 per cent. *ad valorem* duty "fruit-plants, tropical and semi-tropical," but in the engrossed Act of Congress a comma was substituted by a clerical error for the hyphen, and consequently the exempting words stood thus, "fruit, plants, tropical and semi-tropical." In consequence of this mistake, certain Bahama traders brought actions in the United States Courts to recover the 20 per cent. *ad valorem* duty that they had been compelled to pay upon tropical fruit subsequent to the 6th of June, 1872. The United States Government allowed the actions to go by default, as the Secretary of the Treasury decided that the clerical error rendered a new Act of Congress necessary to enforce any duty upon tropical fruit, and the United States Government repaid to the Bahama traders some 50,000 dollars in consequence of this mistake (x).]

In a recent case before the Supreme Court of the United States arising out of the McKinley Act, it was contended that the Act was unconstitutional, on account of the omission of the tobacco rebate section from the Bill as signed by the President, and that the omission of the section by the enrolling clerk, whether due to accident or fraud, avoided the Act, although the Bill was reported to the President and signed as a law (y). But the Supreme Court decided the law to be valid (z).

(x) See the Blue-Book of the Bahamas for the year 1873, published in "Papers relating to H.M.'s Colonial Possessions, Part I. 1875."

(y) *Field v. Clarke* (1891), 143 U. S. 661.

(z) *Vide ante*, p. 36.



## PART III.

### PENAL STATUTES.

#### CHAPTER I.

##### DEFINITION AND CONSTRUCTION OF PENAL ACTS.

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1. THE term "penal statute," if employed without qualification, is ambiguous (*a*). For most, if not all, Acts containing a command or prohibition contain also some express penalty or sanction for disobedience to the command or prohibition which they contain, and where they are silent as to the sanction for disobedience to their commands or prohibitions the common law or the received rules of construction import into them the appropriate sanction—*i.e.*, where the disobedience affects the public interests, liability to indictment for misdemeanour (*b*); and where it affects private interests, liability to action by the person injured by the disobedience (*c*).

Penal Act an  
ambiguous  
term.

From the point of view of a pleader a penal statute is one upon which an action for penalties can be brought by a public officer, by a common informer, with or without the consent of the Attorney-General, or by a person aggrieved. But "penal Act" in its wider sense includes every statute creating an offence against the State, whatever the character of the penalty for the offence. And the expression "penal," as used in the international rule that "one State will not execute the penal laws of another," applies "not only to prosecutions and sentences for crimes and misdemeanours, but also to all suits in favour of the

(*a*) *Vide* *Huntington v. Attrill*, (1893) A. C. 150.

(*b*) *R. v. Hall*, (1891) 1 Q. B. 747, *ante*, p. 207.

(*c*) *Vide ante*, pp. 212 *et seq.*

State for the recovery of penalties for any violation of statutes for the protection of its revenue or other municipal laws, and to all judgments for such penalties" (*d*). The English Courts will examine the terms of a foreign Act to see whether it is or is not a penal law, and in their examination will not be bound down by the construction put upon the Act in the State to which it belongs (*e*), otherwise an English Court might be bound to enforce a foreign law which it deemed penal on the strength of foreign decisions that it was not penal.

Cause of the ambiguity.

The cause of the ambiguity is that statutes fall, from the point of view of penalty or sanction, into three, and not into two classes, viz. :

- (1) Acts enforceable by criminal remedies ;
- (2) Acts enforceable by civil remedies by way of damages ;
- (3) Acts enforceable by civil remedies in the form of penalty, forfeiture, or disability.

Into the third class fall those now comparatively rare Acts in which the sanction for disobedience consists in the right to sue or inform for a specific penalty by civil procedure, *i.e.* by what is properly called a penal action. The object of such statutes is punishment, and the sum recoverable thereunder, whether called penalty or damage, is not assessed with a view of compensating the plaintiff (*f*). They fall into three subdivisions :

- (a) Actions by the Attorney-General or a public official ;
- (b) Actions by common informers ; and
- (c) Actions by persons aggrieved (*g*).

(a) and (b) are in substance the same. The right of a private prosecutor to proceed in a criminal case is theoretically a right to act for the Crown. The prosecutor (since the abolition of appeals) recovers nothing to himself by the prosecution, except in the case of offences under the Larceny Act, 1861 (*h*). But in penal actions the common informer usually obtains by specific statutory provision (*i*) the whole or part of the "blood-money" (*k*).

(c) differs from an ordinary civil action only in that the sum recoverable is liquidated. It is not a penal law within the meaning of international law (*l*).

(*d*) *State of Wisconsin v. Pelican Insurance Society* (1887), 127 U. S. 265, approved in *Huntington v. Attrill*, (1893) A. C. 150.

(*e*) *Huntington v. Attrill*, *ubi supra*.

(*f*) *Thomson v. Lord Clanmorris*, (1900) 1 Ch. 718, 725, Lindley, M.R. : and see *Saunders v. Wiel*, (1892) 2 Q. B. 321.

(*g*) As to the period of limitation for such actions, see 3 & 4 Will. 4, c. 42, s. 3, and *Thomson v. Lord Clanmorris*, *ubi supra*.

(*h*) See sect. 100 of that Act as modified by sect. 24, sub-sect. 2, of the Sale of Goods Act, 1893 (56 & 57 Vict. c. 71).

(*i*) *Brailaugh v. Clarke* (1883), 8 App. Cas. 354.

(*k*) A term now used opprobriously, but surviving from the ancient Saxon law and the procedure by appeal.

(*l*) *Huntington v. Attrill*, (1893) A. C. 150.

The question whether an Act is or is not penal is now in civil cases material for four reasons only:

- (1) With respect to discovery, inasmuch as equity practice has dealt with such actions as so far criminal in their nature as to refuse to assist the plaintiff by interrogation of the defendant;
- (2) With respect to the need of leave of the Court for compromise of the action;
- (3) With respect to venue, which in penal actions was usually local (*m*); and
- (4) With respect to the right of appeal, for if a penal action were held to be "a criminal cause or matter," no appeal would lie to the Court of Appeal.

With reference to criminal law it is material for the purpose of deciding whether disobedience to an Act is or is not a misdemeanour, but this question can only arise in the absence of a specific sanction in the Act itself (*n*).

The following rules apply for deciding where statutes are or are not to be deemed penal:

Rules for  
deciding  
whether an  
Act is penal.

- (1) *Prima facie*, the imposition of a fine or penalty or forfeiture by a statute makes the procedure criminal (*o*). "Where a proceeding is one to enforce a penalty, or where a proceeding is one—not that *must* end in a penalty, because the decision may be in favour of the person against whom it is taken—but where the proceeding is of such a nature that it *may* result in a penalty, it is a penal proceeding" (*p*). Lord Fitzgerald in *Bradlaugh v. Clarke* (1882), 8 App. Cas. 354, 383, thus laid down the rule to be deduced from the old authorities (*q*): "Where it is ordained by statute that for feissance, misfeissance, or nonfeissance the offender shall forfeit a sum of money, and it is not expressed to whom he forfeits it, in all such cases the forfeiture shall be intended for the Queen, save in cases where the penalty is assessed as compensation to the party injured" (*r*).

(*m*) Local venue in actions under statutes prior to 1875 was abolished by Ord. XXXVI. r. 1, of the Supreme Court Rules of 1875, and was not revived by the R. S. C. 1883: *Buckley v. Hull Docks Co.*, (1893) 2 Q. B. 93; and by the Public Authorities Protection Act, 1893 (56 & 57 Vict. c. 61), it is abolished as to all proceedings to which that Act applies.

(*n*) See *R. v. Tyler*, (1891) 2 Q. B. 588, 592, Bowen, L.J.; and *ante*, pp. 207, 219.

(*o*) *Mellor v. Denham* (1880), 5 Q. B. D. 467; *R. v. Whitechurch* (1881), 7 Q. B. D. 534; *R. v. Paget* (1881), 8 Q. B. D. 157, Field, J.; *Ex parte Schofield*, (1891) 2 Q. B. 428.

(*p*) *Derby Corporation v. Derbyshire County Council*, (1897) A. C. 550, 552, Lord Herschell.

(*q*) Bacon, Abr. tit. *Præsumptio*, P. 10.

(*r*) *Cf. Llewellyn v. ... Rail. Co.*, (1898) 1 Q. B. 473, on sect. 53 of the Railways Clauses Act, 1845, under which the penalties go in certain events to the road authority, in other cases to private owners.

- (2) That the fine, penalty, or forfeiture is payable to an individual does not *per se* render the remedy civil (*s*).
- (3) But where the penalty is recoverable by action of debt the remedy is civil. Even in this case the action may not be compromised without the leave of the Court (*t*), and a collusive action for penalties is both unlawful (*u*) and ineffectual (*v*).
- (4) In certain cases the penalty has been held to be in truth liquidated damage, and not a penalty in the stricter sense (*y*). Where an Act imposes a penalty for its contravention, the question arises whether the penalty is inflicted by way of punishment or by way of compensation for the breach. If the former, the contravention is a criminal offence, and even if the sole remedy for the offence is the statutory penalty, the contravention is none the less criminal (*z*).
- (5) In certain other cases, the penalty being recoverable only by a person aggrieved, the action is deemed so far penal that discovery in aid of it is not permitted (*a*).
- (6) An Act may be remedial from one point of view and penal from another.

[In *Stanley v. Wharton* (1821), 9 Price, 301, it was argued that 11 Geo. 2, c. 19, s. 3, which enacted that "if any person shall wilfully . . . assist any tenant in fraudulently conveying away or concealing any part of his goods, every person so offending shall forfeit and pay to the landlord . . . double the value of the goods . . . to be recovered by action of debt," was a penal Act. "But," said Graham, B., "this Act is clearly distinguishable from those Acts which impose penalties," and is "entirely and purely remedial."] But in *Hobbs v. Hudson* (1890), 25 Q. B. D. 232, the same Act was held so far penal that discovery could not be obtained in an action brought upon it. [In *Ex parte Pearson* (1873), L. R. 8 Ch. App. 667, 673, James, L.J., declined to treat sect. 6 of the Bankruptcy Act, 1869, dealing with fraudulent transfers, as a penal statute], and in *Derby Corporation v. Derbyshire County Council*, (1897) App. Cas. 550, it was held that the Rivers Pollution Prevention Act, 1876, which created an offence, but authorised pro-

39 & 40 Vict.  
c. 75.

(*s*) *R. v. Paget* (1881), 8 Q. B. D. 157, following *Hearne v. Gorton* (1859), 2 E. & E. 66. See *R. v. Tyler*, (1891) 2 Q. B. 588.

(*t*) See R. S. C. 1883, Ord. L. rr. 13, 14, 15.

(*u*) 4 Hen. 7, c. 20.

(*x*) *Girdlestone v. Brighton Aquarium Co.* (1878), 3 Ex. D. 137; 4 Ex. D. 107.

(*y*) See *Reeve v. Gibson*, (1891) 1 Q. B. 652.

(*z*) *R. v. Tyler*, (1891) 2 Q. B. 598, Kay, L.J.; cf. *Musgrove v. Chung Teong Toy*, (1891) A. C. 272.

(*a*) See the cases as to forfeiture discussed in *Earl of Me borough v. Whitwood U. D. C.*, (1897) 2 Q. B. 111.

ceedings in a County Court for an order to abstain from committing the offence, was, so far as the County Court proceedings were concerned, not a penal statute.

2. [It is said that penal statutes must be construed strictly—*i.e.*, that “when the Legislature imposes a penalty, the words imposing it must be clear and distinct” (*b*)], and in *Tuck v. Priester* (1887), 19 Q. B. D. 629, 638 (*c*), Lord Esher, M.R., said with reference to sect. 6 of the Copyright Act (25 & 26 Vict. c. 68): “We must be very careful in construing that section, because it imposes a penalty. If there is a reasonable interpretation which will avoid the penalty in any particular case, we must adopt that construction.” But this rule must be read as applicable, if at all, only to penalties of a quasi-public character, and not to Acts creating penalties for infractions of general law which are in the nature of purely civil remedies (*d*). The rules laid down in *Heydon’s case* (1584), 3 Co. Rep. 8 (*e*), for the construction of obscurely penned statutes are there said to apply to “penal” as well as to other statutes. [In *Att.-Gen. v. Sillem* (*The Alexandra case*) (1863), 33 L. J. Ex. 92, 110; 2 H. & C. 431, 509, Pollock, C.B., said: “All the penal statutes there alluded to, and in all the places where that doctrine is to be met with, are statutes which create some disability or forfeiture; none of them are statutes creating a crime, and I think it is altogether a mistake to apply the resolutions in *Heydon’s case* to a criminal statute which creates a new offence. The distinction between a strict construction and a more free one has, no doubt, in modern times almost disappeared, and the question now is, what is the true construction of the statute? I should say that in a criminal statute you must be quite sure that the offence charged is within the letter of the law.” This rule is said to be “founded on the tenderness of the law for the rights of individuals, and on the plain principle that the power of punishment is vested in the Legislature, and not in the judicial department, for it is the Legislature, not the Court, which is to define a crime and ordain its punishment” (*f*).] As to enactments creating crimes, the rule was adopted *in favorem ritæ* in respect of treason and capital felonies, and extended to misdemeanours.

Strict construction.

The question was of more importance in days when there was a disposition to introduce that species of criminal equity (*g*) which led to the dissolution of the Court of Star Chamber. Blackstone lays down the rule thus (*h*): “The law of England

(*b*) *Willis v. Thorp* (1875), L. R. 10 Q. B. 383, 386, Blackburn, J.

(*c*) Followed by Collins, L.J., in *Hildesheimer v. Faulkner*, (1901) 2 Ch. 552, 561.

(*d*) *Vide Huntingdon v. Attrill*, (1893) A. C. 150.

(*e*) *Ante*, p. 95.

(*f*) *U. S. v. Wiltberger* (1820), 5 Wheaton (U. S.), 76, 95, Marshall, C.J.

(*g*) *Vide ante*, pp. 99 *et seq.*, “Construction by the Equity” of a statute; and see Co. Litt. (ed. Thomas), vol. i. p. 29, note Q.

(*h*) 1 Bl. Comm. 88 (ed. Hargr.), note (37).

does not allow of offences by construction, and no case shall be holden to be reached by penal laws but such as are within both the spirit and the letter of such law." The doctrine upon which must be based the *ratio decidendi* of cases put upon constructive fraud (viz., estoppel by conduct), constructive notice or constructive trusts, is inapplicable to the interpretation of a statute, and especially inapplicable to enactments dealing with crime or imposing penalties. For there is no estoppel with relation to the construction of any instrument, though in particular cases the parties may be bound to adopt, for the purpose of regulating their rights or obligations under the instrument, a construction other than the true legal construction.

Relaxation  
of rule.

[The distinction between a strict and a liberal construction has almost disappeared with regard to all classes of statutes, so that all statutes, whether penal or not, are now construed by substantially the same rules. "A hundred years ago," said the Court in *Lyons' case* (1858), Bell C. C. 38, 45, "statutes were required to be perfectly precise, and resort was not had to a reasonable construction of the Act, and thereby criminals were often allowed to escape. This is not the present mode of construing Acts of Parliament. They are construed now with reference to the true meaning and real intention of the Legislature." Therefore, "although the common distinction," as Pollock, C.B., said in *Nicholson v. Field*s (1862), 31 L. J. Ex. 233, 235; 7 H. & N. 810 (i), "taken between penal Acts and remedial Acts, that the former are to be construed strictly and the others are to be construed liberally, is not a distinction, perhaps, that ought to be erased from the mind of a judge," yet the distinction now means little more than "that penal provisions, like all others, are to be fairly construed according to the legislative intent as expressed in the enactment, the Courts refusing on the one hand to extend the punishment to cases which are not clearly embraced in them, and on the other equally refusing by any mere verbal nicety, forced construction, or equitable interpretation to exonerate parties plainly within their scope" (i). In *Stephenson v. Higginson* (1852), 3 H. L. C. 638, 686, the rule was thus stated by Lord Truro: "In construing an Act of Parliament, every word must be understood according to the legal meaning, unless it shall appear from the context that the Legislature has used it in a popular or more enlarged sense. That is the general rule, but in a penal enactment, where you depart from the ordinary meaning of the

(i) Cf. *Ex parte Mann* (1890), 11 N. S. W. Rep. Law, 348, where this rule was applied to a revenue Act.

(k) Sedgwick, *Statutory Law* (2nd ed. p. 282), cited in *Att.-Gen. v. Sillem* (1862), 2 H. & C. 531, by Bramwell, B., who there calls it "a passage in which good sense, force and propriety of language, are equally conspicuous, and which is amply borne out by the authorities, English and American, which are cited in support of it."

words used, the intention of the Legislature that those words should be understood in a more large or popular sense must plainly appear." In *Dickenson v. Fletcher* (1873), L. R. 9 C. P. 7, Brett, J., put the rule thus: "Those who contend that a penalty may be inflicted must show that the words of the Act distinctly enact that under the circumstances it has been incurred. They must fail if the words are merely equally capable of a construction that would, and one that would not, inflict the penalty." This principle of construction is thus accurately stated by Sedgwick: "The more correct version of the doctrine appears to be that statutes of this class are to be fairly construed and faithfully applied according to the intent of the Legislature, without unwarrantable severity on the one hand or unjustifiable lenity on the other, in cases of doubt the Courts inclining to mercy" (l).]

Where an enactment imposes a penalty for a criminal offence, a person against whom it is sought to enforce the penalty is entitled to the benefit of any doubt which may arise on the construction of the enactment (m). "Where there is an enactment which may entail penal consequences, you ought not to do violence to the language in order to bring people within it, but ought rather to take care that no one is brought within it who is not brought within it by express language" (n). On the other hand, as said by Smith, L.J., in *Llewellyn v. Vale of Glamorgan Rail. Co.*, (1898) 1 Q. B. 473, 478, "when an Act (imposing a penalty) is open to two constructions, that construction ought to be adopted which is the more reasonable and the better calculated to give effect to the expressed intention, which in this case is that the penalty shall be paid." And while it is probably true that the principles of construction have been somewhat relaxed in formality in modern days, yet at the same time strictness of statement is still valuable, especially in a case where the result may be highly penal (o), and the procedure indicated by a penal Act must be closely followed (p).

[But penal statutes must never be construed so as to narrow the words of the statute to the exclusion of cases which those words in their ordinary acceptation would comprehend. The Judicial Committee in *The Gauntlet* (1872), L. R. 4 P. C. 184, 191, said: "No doubt all penal statutes are to be construed strictly—that is to say, the Court must see that the thing charged as an offence is within the plain meaning of the words used, and the Court must not strain the words on any notion that there

Operation of statute not to be narrowed by this rule.

(l) Statutory Law (2nd ed.), p. 287, cited with approval by Bramwell, B., in *Foley v. Fletcher* (1858), 27 L. J. Ex. 106.

(m) *London County Council v. Aylesbury Dairy Co.*, (1898) 1 Q. B. 106, 109, Wright, J.

(n) *Rumball v. Schmidt* (1882), 8 Q. B. D. at p. 608, Huddleston, B.

(o) *Cotterill v. Lempiere* (1890), 24 Q. B. D. 637, Coleridge, C.J.; cf. *R. v. Brittleton* (1884), 12 Q. B. D. 266, 268.

(p) See *Smith v. Wood* (1889), 24 Q. B. D. 23.

has been a slip or a *casus omissus*, or that the thing is so clearly within the mischief that it must have been intended to be included (*q*), and would have been included if thought of. On the other hand, the person charged has a right to say that the thing charged, although within the words, is not within the spirit of the enactment. But where the thing is brought within the words and within the spirit, there a penal enactment is to be construed, like any other instrument, according to the fair common-sense meaning of the language used, and the Court is not to find or make any doubt or ambiguity in the language of a penal statute, where such doubt or ambiguity would clearly not be found or made in the same language in any other instrument.”]

[“When large enough words are used,” a prohibition may be extended so as to apply to something which has come into existence since the passing of the Act. Thus, in *Graves v. Ashford* (1867), L. R. 2 C. P. 410, it was held that the piracy of a picture by means of photography was within the statutes of George II. and George III. (8 Geo. 2, c. 13, 7 Geo. 3, c. 38, 17 Geo. 3, c. 57) which were passed for the protection of artists and engravers, although photography was not a known art at the time those statutes were passed. But in *R. v. Smith* (1870), L. R. 1 C. C. R. 266, the question arose whether a person could be convicted under the Larceny Act, 1861 (24 & 25 Vict. c. 96), s. 91, of receiving a chattel, “knowing the same to have been feloniously stolen,” where the stealing of partnership property had been committed by a partner in a firm. The offence of larceny by a partner was not made felony until the passing of 31 & 32 Vict. c. 116; consequently the question was whether 24 & 25 Vict. c. 96 could be extended by implication so as to embrace an offence which was not felony at the time the Act was passed, and the Court held that it could not be so extended.] This decision was approved and followed in *R. v. Streeter*, (1900) 2 Q. B. 601, C. C. R., where it was held that a man jointly indicted with a married woman for receiving goods stolen by the woman from her husband was not liable to conviction under sect. 19 of the Larceny Act, 1861, because the larceny by the wife was not a felony at common law or under the Larceny Act, 1861, but was a new felony created by 45 & 46 Vict. c. 75, ss. 12, 16 (*r*).

(*q*) In *Jenkinson v. Thomas* (1790), 4 T. R. 666, Lord Kenyon said: “We must not extend a penal law to other cases than those intended by the Legislature, even though we think they come within the mischief intended to be remedied.”

(*r*) In *R. v. Payne*, (1906) 1 K. B. 97, he was held to be liable at common law.



## CHAPTER II.

## EFFECT OF PENAL STATUTES.

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1. [SUBJECT to certain exceptions, it is essential,] to make any person liable for disobeying a penal statute, that something more should be proved than the act or omission prohibited: *i.e.* that the act or omission was made with a particular motive or intention. [This principle is shortly expressed by the maxim of law, *Actus non facit reum nisi mens sit rea.*] This rule is not applicable to ordinary civil wrongs. In the case of a civil nuisance, the intent of the defendant is immaterial; and except in the cases of malicious prosecution or defamation on a privileged occasion, the proof of a bad intent is not necessary to give a cause of action (*Allen v. Flood*; (1898) App. Cas. 1) (a), though the defence of absolute accident without negligence may in certain cases be effectual (*Stanley v. Powell*, (1891) 1 Q. B. 86). In cases where the proceeding, whether civil or criminal in form, is for a statutory penalty independent of the civil damage to an individual, it seems to be accepted as the general rule that [if a person does an act in itself indifferent, it must be distinctly proved, before he can be said to have had "a guilty mind," that he did this indifferent act with a criminal intention; but, if the act which he does is in itself unlawful, then the person who does the act will be assumed to have had a criminal intention, and, if he fails to justify or excuse the doing of the act, the law will hold him to be guilty. This was

*Mens rea* must be proved to exist before penalty can be enforced.

(a) On this case see *Quinn v. Leathem*, (1901) A. C. 495, 508, 510.

clearly laid down by Lord Mansfield in *R. v. Woodfall* (1770), 5 Burr. 2661, 2666. "I told the jury," said he, "that where an act, in itself indifferent, becomes criminal, if done with a particular intent, there the intent must be proved and found; but when the act is in itself unlawful, the proof of justification or excuse lies on the defendant, and on failure thereof the law implies a criminal intent." Similarly, in *R. v. Dixon* (1814), 3 M. & S. 11, 15, Lord Ellenborough said: "It is a universal principle that when a man is charged with doing an act, of which the probable consequences may be highly injurious, the intention [to injure] is an inference of law resulting from the doing the act" (b). In *R. v. Hicklin* (1868), L. R. 3 Q. B. 360, it was held, in conformity with this rule, that the publication of a pamphlet called the "Confessional Unmasked," which contained a quantity of obscene matter, was a misdemeanour within the Obscene Publications Act, 1857 (20 & 21 Vict. c. 83), s. 1, and was not justified or excused by the fact that it had been published solely for the purpose of exposing the iniquity of the confessional. "I do not think," said Blackburn, J., "that you could so construe this statute as to say that, whenever there is a wrongful act of this sort committed, you must take into consideration the intention and object of the party in committing it, and, if these are laudable, that that would justify the wrongful act." And in *Steele v. Brannan* (1872), L. R. 7 C. P. 261 where the same question was at issue, Bovill, C.J., said: "The probable effect of the publication of this book being prejudicial to public morality and decency, the appellant must be taken to have intended the natural consequences of such publication, even though the book were published with the objects referred to by his counsel."]

In *R. v. Tolson* (c) a question arose whether a woman could be convicted of bigamy who had married a second time, believing, in good faith and upon reasonable grounds, that the first husband was dead. The act charged fell within the very words of the Offences against the Person Act, 1861 (24 & 25 Vict. c. 100), s. 57, "whoever being married shall marry any other person during the life of the former husband or wife shall be guilty of felony," and the prisoner could not bring herself within the exception, as her husband had not been continually absent for seven years last past. The Court were divided (nine to five) as to the proper answer to the question, and it became necessary to discuss the maxim, *Actus non facit reum nisi mens sit rea* (d), and to examine the decisions in which it has been

(b) Cf. *Gayford v. Chouler*, (1898) 1 Q. B. 316, a case on sect. 52 of the Malicious Damage Act, 1861 (24 & 25 Vict. c. 97).

(c) (1889), 23 Q. B. D. 168.

(d) The exemption of children from prosecution for crime is absolute up to seven, qualified up to fourteen years, Archbold, Cr. Pl. (23rd ed.), 22, 23. The validity of the plea of insanity to a charge of crime seems to rest on this maxim: *ibid.* p. 24.

applied, in order to extract some idea of its meaning and of its application to statutory offences. Cave, J., said (at p. 182) : "At common law an honest and reasonable belief in the existence of circumstances which, if true, would make the act for which a prisoner is indicted an innocent act, has always been held to be a good defence. This doctrine is embodied in the somewhat uncouth maxim, *Actus non facit reum nisi mens sit rea*. Honest and reasonable mistake stands, in fact, on the same footing as absence of the reasoning faculty, as in infancy, or perversion of that faculty, as in lunacy. Instances of the existence of this common law doctrine will readily occur to the mind. So far as I am aware, it has never been suggested that these exceptions do not equally apply in the case of statutory offences unless they are excluded expressly or by necessary implication" (e). Assuming the correctness of this view, the result reached by the learned judge can be attained by reference to the ordinary rule of construction, that a rule of the common law, whether as to substantive or objective law, is not abrogated by statute, except by express provision or necessary implication (f). In *Bank of N. S. W. v. Piper*, (1897) App. Cas. 383, 389, the Judicial Committee said : "It was strongly urged by the respondent's counsel that, in order to the constitution of a crime, whether common law or statutory, there must be *mens rea* or theft of the accused, and that he may avoid conviction by showing that such *mens* did not exist. That is a proposition which their lordships are not concerned to dispute ; but the question whether a particular intent is made an element of the statutory crime, and when that is not the case, whether there was an absence of *mens rea* in the accused, are questions entirely different, and depend on different considerations. In cases where the statute requires a motive to be proved as an essential element of the crime, the prosecution must fail if it is not proved. On the other hand, the absence of *mens rea* really consists in an honest and reasonable belief by the accused of the existence of facts which, if true, would make the act charged against him innocent" (g). The rule already laid down (*ante*, p. 286), that, where a statute creates a new kind of felony, the common law incidents of felony attach to the new statutory crime, appears to be applicable, not only to questions of procedure and forfeiture, but also to the evidence admissible to prove or disprove the commission of the crime.

Sir James Stephen, in *R. v. Tolson* (*loc. cit.* p. 185), dealt with

(e) This rule is substantially that laid down by Brett, J., in *R. v. Prince* (1875), L. R. 2 C. C. R. 154, and adopted by Stephen, J., in *R. v. Tolson*, *ibid.* p. 190.

(f) *Vide ante*, pp. 278 *et seq.*

(g) As to this see *Williamson v. Norris*, (1899) 1 Q. B. 7, where it was held that a servant of the Kitchen Committee of the House of Commons could not be convicted of selling liquor contrary to sect. 3 of the Licensing Act, 1872 (35 & 36 Vict. c. 94), it being found that he merely acted under orders of the Committee.

the question from another point of view: "My view of the subject is based upon a particular application of the doctrine usually, though I think not happily, described by the phrase, *Non est reus nisi mens sit rea*. Though the phrase is in common use, I think it most unfortunate, and not only likely to mislead, but actually misleading, on the following grounds:—It naturally suggests that, apart from all particular definitions of crimes, such a thing exists as *mens rea*, or guilty mind, which is always expressly or by implication involved in every definition. . . . To an unlegal mind it suggests that, by the law of England, no act is a crime which is done from laudable motives—in other words, that immorality is essential to crime." After discussing the history of the phrase, he went on thus (at p. 187): "The principle involved appears to me, when fully considered, to amount to no more than this. The full definition of every crime contains, expressly or by implication, a proposition as to a state of mind. Therefore, if the mental element of any conduct alleged to be a crime is proved to have been absent in any given case, the crime so defined is not committed. Or again, if a crime is fully defined, nothing amounts to that crime which does not satisfy that definition (*h*). Crimes are at the present day far more accurately defined, by statute or otherwise, than they formerly were. The mental element of most crimes is marked by one of the words 'maliciously,' 'fraudulently,' 'negligently,' or 'knowingly.' But it is the general—I might, I think, say the invariable—practice of the Legislature to leave unexpressed some of the mental elements of crime. In all cases whatever, competent age, sanity, and some degree of freedom from some kind of coercion are assumed to be essential to criminality, but I do not believe they are ever introduced into any statute by which any particular crime is defined."

50 & 51 Vict.  
c. 28.

In *Coppen v. Moore*, No. 2, (1898) 2 Q. B. 306, 311, 312, Lord Russell, L.C.J., said: "The appellant's contention was that the charge here preferred (under sect. 2 of the Merchandise Marks Act, 1887) was a criminal charge, and that the general principle of law is '*Nemo reus est nisi mens sit rea*.' There is no doubt that this is the general rule, but it is subject to exceptions, and the question here is whether the present case falls within the rule or within the exception. Apart from statute, exceptions have been engrafted upon the rule; for example, in the case of *R. v. Stephens* (1866), L. R. 1 Q. B. 702, the defendant was held liable on an indictment for obstructing navigation by throwing rubbish into a river from a quarry owned by him but managed by his son, although it was proved that the men employed at the quarry had been by order prohibited from doing the acts complained of. No doubt in that case the fact that the proceedings were only in form criminal was adverted to

(*h*) Cf. *Cundy v. Lezcoq* (1884), 13 Q. B. D. 207.

by the judge who decided it, but the fact remains that the defendant was criminally indicted" (i).

Upon the principles thus laid down there seems to be general judicial agreement, and the whole difficulty arises on their application to particular definitions of offences; *i.e.* in deciding whether the statute prohibits absolutely the acts defined as constituting an offence, or whether the prohibition is to be read with the common law qualification. The application must in every case turn on the wording of the particular enactment, or, in case of ambiguity (k), upon the governing intention of the Act in which it is contained, or the set of Acts relating to the subject-matter. And decisions on particular statutes are consequently of value only when they are *in pari materia* with the enactment under discussion, or are drawn in the same terms as that under review. These rules apply equally to Orders in Council or other instruments issued under statutory authority which create offences.

It will be found that by using the words "wilfully and maliciously," or by specifying some special intent as an element of particular crimes, knowledge of fact is implicitly made part of the statutory definition of most modern definitions of crime; but there are some enactments of which this cannot be said (l).

"Although, *prima facie* and as a general rule, there must be a mind at fault before there can be a crime, it is not an inflexible rule, and a statute may relate to such a subject-matter and may be so framed as to make an act criminal whether there has been any intention to break the law or otherwise to do wrong, or not. There is a large body of municipal law in the present day which is so conceived. By-laws are constantly made regulating the width of thoroughfares, the height of buildings, the thickness of walls, and a variety of other matters necessary for the general welfare, health, or commerce, and such by-laws are enforced by the sanction of penalties, and the breach of them constitutes an offence, and is a criminal matter . . . and in such a case the substance of the enactment is that a man shall take care that the statutory direction is obeyed, and that if he fails to do so he does so at his peril" (m). [*"Mens rea* may be dispensed with," said Cockburn, C.J., in *R. v. Sleep* (1861), L. & C. 44, at p. 52, "by statute, although the terms which should induce us to infer that it is dispensed with must be very strong." "There are enactments," said Brett, J., in *R. v. Prince* (1875), L. R. 2 C. C. R. 163, "which by their form seem to constitute the prohibited acts into crimes, and by virtue

(i) See also *Pearks, Gunston and Tee v. Ward*, (1902) 2 K. B. 1, 11, Channell, J.

(k) See *Nicholls v. Hall* (1873), L. R. 8 C. P. 322, 327, Keating, J.

(l) *E.g.* 24 & 25 Vict. c. 100, s. 55; *R. v. Prince* (1875), L. R. 2 C. C. R. 154; sect. 56, and sect. 4, but not sects. 5, 6, 7, of 48 & 49 Vict. c. 69 (Criminal Law Amendment Act, 1885).

(m) *R. v. Tolson* (1889), 23 Q. B. D. 173, Wills, J.

of these enactments persons charged with the committal of the prohibited acts may be convicted in the absence of the knowledge or intention supposed necessary to constitute a *mens rea*. Such are enactments with regard to trespass in pursuit of game, or of piracy of literary or dramatic works (*n*), or the statutes passed to protect the revenue." To these may be added enactments relating to the sale of intoxicating liquors (*o*), food (*p*), and drugs (*q*), fertilizers, and feeding stuffs (*r*), and to weights and measures (*s*). And the reason why it is not necessary to prove the existence of a *mens rea* in persons charged with committing offences against these enactments is because, as Brett, J., goes on to point out, they "do not [really] constitute the prohibited acts into crimes, but only prohibit them for the purpose of protecting the individual interest of individual persons or of the revenue" (*t*); and in a series of cases upon sect. 52 of the Malicious Damage Act, 1861, it has been held that an offence is committed against the section by doing damage wilfully, though the damage is not done maliciously nor with intent to injure the owner of the property (*u*).

24 & 25 Vict.  
c. 97.

Either know-  
ledge or per-  
sonal neglect  
must be  
proved before  
penalty can  
be enforced.

32 & 33 Vict.  
c. 70.

[Another important general rule with regard to the operation of penal statutes is that before a person can be convicted under a penal statute it is necessary to prove either that he knew that he was doing the prohibited act, or that it happened either in consequence of his personal neglect or without his having any lawful excuse (*x*).] If the accused was insane, under the present law he is found guilty but insane, and not acquitted for insanity as provided by the common law. But with reference to neglect the law is unchanged. [In *Nicholls v. Hall* (1873), L. R. 8 C. P. 322, a person had been convicted under the Contagious Diseases (Animals) Act, 1869, for neglecting to give notice of the fact that he had in his possession a diseased animal; his defence was that he was not aware that the animal was diseased, and that, consequently, it was impossible for him to give notice of a fact of which he had no knowledge. On appeal, the conviction was quashed, on the ground that his defence was a good one, and that "knowledge is an essential ingredient of the offence." For, as the Court said in *Emmerton v. Matthews* (1862), 31 L. J. Ex. 142, "a salesman offering for

(*n*) See *Watkins v. Major* (1875), L. R. 10 C. P. 662.

(*o*) *Sherras v. De Rutzen*, (1895) 1 Q. B. 918; *Emery v. Nolloth*, (1903) 2 K. B. 269; 72 L. J. K. B. 620.

(*p*) *Dyke v. Gower*, (1892) 1 Q. B. 220.

(*q*) Cf. *Fitzpatrick v. Kelly* (1873), L. R. 8 Q. B. 337.

(*r*) *Laird v. Dobell*, (1906) 1 K. B. 131; *Corten v. West Sussex County Council*, (1903) 72 L. J. K. B. 514.

(*s*) Cf. *Great Western Rail. Co. v. Baillie* (1864), 5 B. & S. 929.

(*t*) Cf. *Davies v. Harvey* (1874), L. R. 9 Q. B. 433, Lush, J.; and see *Bond v. Evans* (1885), 21 Q. B. D. 249.

(*u*) *Roper v. Knott*, (1898) 1 Q. B. 868; *Gardner v. Mansbridge* (1887), 19 Q. B. D. 217.

(*x*) *Vide* 4 Bl. Comm. 21.

sale a carcass with a defect of which he is not only ignorant, but has not any means of knowledge, is not liable to any penalty, and does not, as a matter of law, impliedly warrant that the carcass is fit for human food" (*y*). In *Dickenson v. Fletcher* (1873), L. R. 9 C. P. 1, an owner of a mine was indicted under the Mines Regulation Act, 1860 (23 & 24 Vict. c. 151), for not having the safety lamps used in the mine examined and securely locked by some duly authorised person. It was proved that the respondent had appointed a competent lamp-man, and that it was through his default that, on the occasion in question, the lamps had been given out unlocked. Upon these facts the magistrates had refused to convict, and, on appeal, their decision was confirmed, on the ground that a person cannot be made liable to a penalty if there has been no neglect or default on his part.] But this rule is not absolute, and under the Sale of Food and Drugs Acts milk-sellers have been convicted for the acts of their servants without any evidence of personal knowledge or default (*z*). And under the Licensing Acts and the Merchandise Marks Acts convictions for contravention of the statutes have been supported against masters in respect of the violation of the statutes by a servant, if the act done was within the scope of his authority, even in disobedience to express directions by the master (*a*). Some modern Acts substitute presumption for evidence, and throw on the accused the burden of establishing his innocence (*b*). But even under such Acts *bonâ fide* belief in facts which, if true, would make the act done no offence, excludes the presumption of guilt arising from proof that the act was done (*c*).

[A third important rule with regard to the operation of penal statutes is that a *bonâ fide* claim of right ousts the jurisdiction of an inferior court. This is not in reality a common law restriction so far as concerns justices of the peace, for "all summary jurisdiction is the creation of statute; and on the principle that title could not be intended to be decided by an inferior tribunal (*d*), there has arisen the well-established rule that every statute giving summary jurisdiction has the implied restriction as to title, and that the justices must hold their hands

*Bonâ fide*  
claim of right  
ousts juris-  
diction of  
inferior  
Court.

(*y*) But see *Bostock v. Nicholson*, (1904) 1 K. B. 725, as to sale of beer containing poisonous elements.

(*z*) *Dyke v. Gower*, (1892) 1 Q. B. 220.

(*a*) *Parker v. Alder*, (1899) 1 Q. B. 20; *Coppen v. Moore* (No. 2), (1898) 2 Q. B. 306; *Police Commissioner v. Cartman*, (1896) 1 Q. B. 655, where all the authorities are collected. But see *Williamson v. Norris*, (1899) 1 Q. B. 7.

(*b*) *R. v. Kent Justices* (1889), 24 Q. B. D. 181, Mathew, J.; *Coppen v. Moore* (No. 2), (1898) 2 Q. B. 306.

(*c*) *Sherras v. De Rutzen*, (1895) 1 Q. B. 918; *Somersett v. Wade*, (1894) 1 Q. B. 574. Cf. *Chisholm v. Doulton* (1889), 22 Q. B. D. 741; *Rider v. Wood* (1859), 2 E. & E. 343; decided on 4 Geo. 4, c. 34, s. 3 (rep.).

(*d*) See Archbold, Cr. Pl. (23rd ed.), 33; *White v. Feast* (1872), L. R. 7 Q. B. 353, 358; *R. v. Clements*, (1898) 1 Q. B. 556, C. C. R.

But right  
must be one  
that can exist  
in law.

if a *bonâ fide* claim of right is set up" (e). "The rule of law," said Blackburn, J., in *R. v. Stimpson* (1863), 32 L. J. M. C. 210, "is that the justices are not to convict where a real question is raised between the parties as to the right. As soon as that is done the jurisdiction which before existed ceases, and the question ought to be left to be decided by a higher tribunal." But the rule of law must not be read as absolute, for "it is perfectly competent to the Legislature to qualify the restriction within such limits as seem good to them," and the Courts must in each case adjudicate with reference to the laws of the particular enactment giving or restricting the jurisdiction of the tribunal in question. "The Legislature, therefore, having expressly stated the limit, it is not for us to impose any other limit; the express restriction supersedes the implied restriction" (f). Thus in some statutes, as the Highway Acts, the terms used show that the justices are not to hold their hands even if a claim of right is set up (g). In *Cornell v. Sanders* (1862), 32 L. J. M. C. 9, Cockburn, C.J., pointed out "that the doctrine as to the jurisdiction of the justices being ousted by a claim of right applies only to a claim of right alleged by the defendant as a part of his case which he comes before the justices to set up. If he *bonâ fide* raises a question of title in himself, the justices have no longer any jurisdiction to go on with the hearing; but there must be some show of reason in the claim, and it is not sufficient unless he satisfy the justices that there is some reasonable ground for his assertion of title." A person, therefore, who makes a claim of right must be prepared to show that the right he claims is one which can exist in law (h), and, as Wightman, J., observed in the same case, if it appears that the title which he sets up in himself is "not such a title as is known to the law," the jurisdiction of the justices will not be ousted. Thus, in *Hudson v. M' Rae* (1864), 33 L. J. M. C. 65, it appeared that a person had been convicted for "unlawfully and wilfully attempting to take fish" contrary to the Larceny Act, 1861 (24 & 25 Vict. c. 96), s. 24. It was proved that he claimed a right, as one of the public, to fish from a footpath where the public had fished for sixty years previously. The justices held that he had acted and made his claim under a *bonâ fide*, but mistaken, supposition that he had such a right. They also held that such a right could not be acquired in a non-navigable river, and consequently they convicted him. On appeal, the conviction was upheld, on the ground that the right

(e) *White v. Feast* (1872), L. R. 7 Q. B. 353, 358, Blackburn, J.

(f) *White v. Feast* (1872), L. R. 7 Q. B. 353, 357, Cockburn, C.J.

(g) *Loc. cit.* p. 358, Blackburn, J.; and see *Leicester Urban Sanitary Authority v. Holland* (1887), 57 L. J. M. C. 75.

(h) See *Hargreaves v. Diddams* (1875), L. R. 10 Q. B. 582; *Pearce v. Scotcher* (1882), 9 Q. B. D. 162; *Simpson v. Wells* (1872), L. R. 7 Q. B. 214; and Douglas's Summary Jurisdiction Procedure (8th ed.), p. 68.



set up was a right that could not possibly exist in law, and that, consequently, the jurisdiction of the magistrates was not ousted.] In *R. v. French*, (1902) 1 K. B. 637, on proceedings under the Offences against the Person Act, 1861, it was contended that the jurisdiction of the justices was ousted by the proviso in sect. 46 against the determination of assault cases "in which any question shall arise as to the title to any lands, &c." The proviso was held not to apply to a case where two commoners quarrelled on the question where one of them was using his common rights to excess.

2. In *Bradlaugh v. Clarke* (1883), 8 App. Cas. 350, 358, Lord Selborne said: "It was acknowledged as an incontestable proposition of law (i) 'that where a penalty is created by statute, and nothing is said as to who may recover it, and it is not created for the benefit of a party grieved (k), and the offence is not against an individual, it belongs to the Crown, and the Crown alone can maintain a suit for it.' Bramwell, L.J., referred to Comyns' Digest, Forfeiture, C., as correctly laying down that doctrine. If it were necessary, many other authorities to the same effect might be mentioned. It reasons on a very plain and clear principle. No man can sue for that in which he has no interest; and a common informer can have no interest in a penalty of this nature unless it is expressly or by necessary implication given to him by statute. The Crown, and the Crown alone, is charged generally with the execution and enforcement of penal laws enacted by public statutes for the public good, and is interested *jure publico* in all penalties imposed by such statutes, and therefore may sue for them in due course of law where no provision is made to the contrary. The *onus* is upon a common informer to show that the statute has conferred upon him a right of action to recover the particular penalty which he claims."

Who may sue for penalty.

["It has been decided," said the Judicial Committee in *Del Campo v. R.* (1837), 2 Moore, P. C. 15, 18, "that, where the offence is made a joint offence by statute, the parties concerned are liable to but one forfeiture," whereas, if a statute imposes a penalty for an offence, and expressly states that "every person" concerned in committing the offence shall be liable to the penalty, it has been held, in *R. v. Dean* (1843), 12 M. & W. 39, that the penalty may be recovered against each person concerned, although only one offence has been committed. But if the statute does not expressly state whether, when only one offence has been committed, but more than one person has been concerned in committing the offence, the penalty shall be recoverable from each person concerned, it appears that the true

Joint or several liability to penalty.

(i) It would have been more accurate to say "established rule of construction."

(k) Including a corporation; 52 & 53 Vict. c. 63, s. 2, sub-s. 2, *post*, p. 444.

rule is, that where the offence is in its nature single and cannot be severed, only one penalty is recoverable against all, whereas if the offence is in its nature severed, every person concerned may be separately guilty of it, and severally liable to pay the penalty. This was pointed out by Lord Mansfield in *R. v. Clark* (1777), 2 Cowp. 610, 612. "Where," said he, "the offence is in its nature single and cannot be severed, there the penalty shall be only single, because, though several persons may join in committing it, it still constitutes but one offence. But where the offence is in its nature several, and where each person concerned may be separately guilty of it, there each offender is separately liable to the penalty, because the crime of each is distinct from the offence of the others, and each is punishable for his own crime. For instance, the offence created by 1 & 2 Ph. & Mar. c. 12, is 'the impounding a distress in a wrong place.' One, two, three, or four may impound it wrongfully; it is still but one act of impounding; it cannot be severed; it is but one offence, and therefore shall be satisfied by one forfeiture. So, under 6 Anne, c. 14, killing a hare is but one offence in its nature, whether one or twenty kill it; it cannot be killed more than once. If partridges are netted by night, two, three, or more may draw the net, but still it constitutes but one offence." But it was held in *R. v. Littlechild* (1871), L. R. 6 Q. B. 293, that the offence of "killing or taking any game . . . on a Sunday," in contravention of 1 & 2 Will. 4, c. 32, s. 3, is an offence which, as Lush, J., observed in that case, "it is perfectly clear that two or more persons may commit," and that they may be "jointly charged" but "separately convicted." And it is important to come to a correct decision as to whether an offence is several or not, because, if an offence is several and a joint fine is imposed upon all the persons engaged in committing the offence, such a conviction would be bad and liable to be quashed. It was so held in *Morgan v. Brown* (1836), 4 A. & E. 515, for, as it is said in *Hawkins* (P. C. bk. ii. c. 48, s. 18), "otherwise one who hath paid his proportionate part might be continued in prison till all the others have also paid theirs, which would be in effect to punish him for the offence of another."]

Cumulative penalties.

[A question also sometimes arises whether the penalty imposed by a statute for doing some certain prohibited act is cumulative (*l*) or not, that is to say, whether, if the act is done by the same person more than once on the same day and at the same place, that person is liable to one penalty only or to a penalty for each time he does the act in question. The answer to this question will entirely depend upon the language employed by the Legislature (*m*), it being borne in mind, as was said

(*l*) Penalties are also said to be cumulative when a person by the same act commits two distinct and substantive offences: *Saunders v. Baldy* (1865), 6 B. & S. 791.

(*m*) See *Llewellyn v. Vale of Glamorgan Rail Co.*, (1898) 1 Q. B. 473, 476, Chitty, L.J.

by Bovill, C.J., in *Garrett v. Messenger* (1867), L. R. 2 C. P. 585, that "if the Legislature intends that there should be more than one penalty, that intention will no doubt be expressed in clear and unequivocal terms" (*n*). Thus, in *Brooke v. Milliken* (1789), 3 T. R. 509, it appeared that it was enacted by 12 Geo. 2, c. 36, s. 1, that "it shall not be lawful to import into this kingdom for sale any book . . . and if any person shall sell any such book . . . such offender shall forfeit 5*l*. and double the value of every book which he shall so sell," and it was held that a person who sold two such books to different persons on the same day was liable to a penalty for each act of sale. So also in *Ex parte Beal* (1868), L. R. 3 Q. B. 387, it was held that, where a penalty of 10*l*. was imposed by 25 & 26 Vict. c. 68, s. 6, "if any person . . . shall sell any repetition copy or imitation of any work of the copyright of which he is not at the time being the proprietor," a person who sold ten copies at one time of such a work had committed ten separate offences, and was liable to be punished for each separately (*o*). But if it is clear from the language used in the statute that, as Lord Mansfield said in *Crepps v. Durden* (1777), Cowp. 640, "repeated offences are not the object which the Legislature had in view in making the statute," the penalty will not be considered as cumulative. In that case it appeared that it was enacted by the Sunday Observance Act, 1679 (29 Chas. 2, c. 7), s. 1, that "no tradesman shall do or exercise any worldly labour upon the Lord's Day, and that every person shall for every such offence forfeit the sum of five shillings," and it was held that a person who sold small hot loaves four times on one Sunday had committed but one offence against the statute, and was liable to one penalty only. "On the construction of the Act of Parliament," said Lord Mansfield, "the offence is, exercising his ordinary trade upon the Lord's Day, and that without any fractions of a day, hours or minutes. It is but one entire offence, whether longer or shorter in point of duration; so, whether it consist of one or of a number of particular acts. There is no idea conveyed by the Act itself that, if a tailor sews on the Lord's Day, every stitch he takes is a separate offence, or if a shoemaker work for different customers at different times on the same Sunday, that those are so many separate and distinct offences." This decision was followed in *Apothecaries' Co. v. Jones* (1893), 1 Q. B. 89, where a number of other cases were discussed, and it was held that only one penalty was incurred under sect. 20 of the Apothecaries Act, 1815 (55 Geo. 3, c. 194), by an uncertificated person, who practised as an apothecary, and attended three persons on the same day.

Penalties are also said to be cumulative when the same act or Alternative penalties.

(*n*) See *Apothecaries' Co. v. Jones*, (1893) 1 Q. B. 89, and cases there cited.

(*o*) As to mitigation of penalties, see *Hildesheimer v. Faulkner*, (1901) 2 Ch. 552, C. A.

omission constitutes an offence under two or more Acts. But this use of the term is now inaccurate, as such penalties are always alternative, and not cumulative. Section 2 (2) of the Interpretation Act, 1889, provides that where under any Act (whether general, local and personal, or private, and whether passed before or after January 1, 1890) any forfeiture or penalty is payable to a party aggrieved, it shall be payable to a body corporate in every case where that body is the party aggrieved (*p*). This does not alter the rule of common law that a corporation cannot sue as a common informer.

Effect of  
penal Acts on  
corporations.

3. The liabilities of corporations under penal statutes are thus stated by Bowen, L.J. (*q*): "I take it to be clear that in the ordinary case of a duty imposed by statute, if the breach of the statute is a disobedience to the law, punishable in the case of private persons by indictment, the offending corporation cannot escape from the consequences that would follow in the case of an individual by showing that they are a corporation. That seems to me to be good sense and good law."

52 & 53 Vict.  
c. 63, s. 2 (1).

By the Interpretation Act, 1889, repealing and re-enacting 7 & 8 Geo. 4, c. 28, s. 14, "In the construction of every enactment relating to an offence punishable on indictment or on summary conviction, whether contained in an Act passed before or after January 1, 1890, the expression 'person' shall, unless the contrary intention appears, include a body corporate." The statutory rule is laid down in terms partly wider, partly narrower, than the judicial rule, which was enunciated without reference to the statute. A contrary intention is held to appear in the case of treason, felony, or of misdemeanours involving personal violence, as riots or assaults (*r*). But in the case of libel and nuisance corporations may be prosecuted, and corporations are held liable for breaches of statutes containing absolute prohibitions (*s*).

Contract  
which in-  
volves in its  
performance  
the doing of  
something  
made penal  
is void.

4. [Any contract which involves in its fulfilment the doing of an act which is prohibited by statute is void (*t*), and, as a general rule, as Lord Hatherley said in *Re Cork and Youghal Railway* (1869), 4 Ch. App. 748, 758, "everything in respect to which a penalty is imposed by statute must be taken to be a thing forbidden." Consequently, if a contract involves in its performance the doing of anything which is rendered penal by statute, the contract will be void. This rule of law was enunciated by Lord Holt in *Bartlett v. Viner* (1692), Skinner, 323, as follows: "Where a penalty is annexed to the doing of an

(*p*) Interpretation Act, 1889 (52 & 53 Vict. c. 63), s. 33, *post*, App. C; *Sims v. Pay* (1888), 58 L. J. M. C. 39.

(*q*) *R. v. Tyler*, (1891) 2 Q. B. 594.

(*r*) See *Pharmaceutical Society v. London and Provincial Supply Association* (1880), 5 App. Cas. 857, 869.

(*s*) See *Pearks, Gunston and Tee v. Ward*, (1902) 2 K. B. 1, 11, Channell, J., a case under the Sale of Food and Drugs Act, 1875.

(*t*) *Vide ante*, p. 223.

act, though it be not prohibited, yet; if it appears upon the record to be the consideration, the agreement is void, for it will be ridiculous to give judgment that the plaintiff shall receive such a thing, the which if he takes, he shall be subject to the penalty of a statute; therefore in every case where a statute inflicts a penalty for doing an act, though the act be not prohibited, yet the thing is unlawful, for it cannot be intended that a statute would inflict a penalty for a lawful act.”]

A contract may be void without being illegal, when the making of the contract is forbidden, but the sole penalty for disobedience to the prohibition is, that the contract cannot be enforced. This is the case with betting contracts within the Gaming Acts (1845 and 1892) (*u*).

[But the general rule, as enunciated by Lord Holt, is subject to an important exception, arising from the fact that penalties are imposed by statute for two distinct purposes—(1) for the protection of the public against fraud, or for some other object of public policy; (2) for the purpose of securing certain sources of revenue either to the State or to certain public bodies. The question, therefore, will always arise with regard to these cases, “whether,” as Parke, B., said in *Taylor v. Crowland Gas Co.* (1854), 10 Ex. 293, “looking at the statute, the object of the Legislature in imposing the penalty was to prohibit the particular act, or merely to secure to the revenue” some particular source of income. In *Brown v. Duncan* (1829), 10 B. & C. 93, the plaintiffs were distillers, and one of them had rendered himself liable to a penalty under 4 Geo. 4, c. 94, s. 131, for carrying on a retail business in spirits at the same time; it was contended, therefore, that, as a penal statute had been contravened by one of them, they could not recover the price of spirits sold by them. “But we think,” said Lord Tenterden, “that the plaintiffs are entitled to recover; there has been no fraud on their parts, although they have not complied with the statutory regulations. . . . The clauses of the Act had not for their object to protect the public, but the revenue only.” Similarly, in *Wetherall v. Jones* (1832), 3 B. & Ad. 221, where the plaintiff, who was a dealer in spirits, had rendered himself liable to a penalty for non-compliance with an excise regulation required by 6 Geo. 4, c. 80, s. 115, as to the form of the permit to be sent out along with any spirits sold by him, it was held that this irregularity as to the permit, “though a violation of law by him, did not deprive him of the right of suing upon a contract in itself perfectly legal.” “Where,” said the Court, “the consideration and the matter to be performed are both legal, we are not aware that a plaintiff has ever been precluded from recovering by an infringement of the law, not contemplated by the contract, in the performance of something

Exception to this rule if penalty merely imposed to secure to revenue particular source of income.

(*u*) See *Powell v. Kempton Park Racecourse Co.*, (1899) A. C. 143.

to be done on his part.” Again, in *Smith v. Mawhood* (1845), 14 M. & W. 452 (x), it appeared that the Excise Act of 6 Geo. 4, c. 81, ss. 25, 26, subjected to penalties any person who sold tobacco without taking out the license required for that purpose; but it was held that this Act did not avoid a contract for the sale of tobacco made by a person who had omitted to fulfil the requirements of the Act, because the penalties were imposed merely for the benefit of the revenue. “I think,” said Parke, B., “that the object of the Legislature was not to prohibit a contract of sale by dealers who have not taken out a license pursuant to the statute, but, if such was the object, they certainly could not recover, although the prohibition was merely for the purpose of revenue.”] And in considering the effect of a statutory prohibition on a contract, it is always necessary to decide whether the penalty imposed for breach of the statute is meant as a compensation to the person aggrieved or as a penal sanction. In the former case, the statute in effect permits the contract on payment of the penalty; in the other, it forbids it *in toto* (y).

Contract is avoided if penal act contravened although penalty be not enforceable.

[And if it is clear that a penalty is imposed by statute for the purpose of preventing something from being done on some ground of public policy, the thing prohibited, if done, will be treated as void, even though the penalty imposed is not enforceable. Thus, in the *Sussex Peerage claim* (z) (1844), 11 Cl. & F. 85, the question was whether the marriage of the Duke of Sussex was void in consequence of the provisions of the Royal Marriages Act, 1772 (12 Geo. 3, c. 11). That Act, by s. 3, imposes the penalties of a *præmunire* upon any person who solemnises or assists at the celebration of any marriage in contravention of its provisions. It appeared that the marriage of the Duke of Sussex was celebrated without the royal consent which was required by the Act, but as it took place in Rome, and as there is no provision made in sect. 3 for the trial of the offender where the offence should be committed out of England, it was argued that the necessary inference was that the statute itself did not extend to prohibit a marriage out of England. This argument, however, did not prevail. “We think,” said the judges in delivering their opinion, “that the most just and reasonable inference is, that the penal clause is itself defective in not making provision for the trial of British subjects when they violate the statute out of the realm, and not that we should refuse, on account of the defect in the penal clause, to give the plain words of the statute their necessary force, and hold the enactment itself to be substantially useless and inoperative.”]

(x) Approved, *Melliss v. Shirley L. B.* (1885), 16 Q. B. D. 446, 452.

(y) See *Musgrove v. Chung Teeong Toy*, (1891) A. C. 272.

(z) Reported also 6 St. Tr. N. S. 79.

## PART IV.

### LOCAL, PERSONAL AND PRIVATE ACTS.

#### CHAPTER I.

##### NATURE AND CONSTRUCTION OF PRIVATE ACTS.

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1. PRIVATE ACTS have been dealt with historically by Mr. Clifford in his excellent work on the History of Private Bill Legislation, and from the point of view of parliamentary practice by Sir Erskine May (*a*), and by the Standing Orders of both Houses, and in the reports of decisions by the Referees of Private Bills. But these authorities are not to any extent concerned with the construction of a private Act when obtained, which they leave to the Courts of law.

Parliament now understands by private Bills all those projects of law which affect the interests of particular localities, and are not of a public general character, and are introduced by petition (*b*). Every Bill for the particular interest or benefit of any person or persons, whether it is brought in upon petition or motion, or report from a committee, or brought from the Lords, is a private Bill within the meaning of the table of fees established by the Standing Orders of the House of Commons (*c*).

(*a*) Parl. Pr. (10th ed.); and see Ilbert, Legislative Methods and Forms.

(*b*) 1 Cliff. Hist. Priv. Bill Leg., p. 267. See also Ilbert, *op. cit.* 28, 33, 48—50; Sedgwick, Statutory Law (2nd ed.), pp. 24—27; and *ante*, pp. 56—59.

(*c*) Parl. Pap. 1906—C—No. 108, p. 124.

Distinction  
between  
public and  
private Acts.

Origin of  
private Acts.

As to their  
introduction  
into Parlia-  
ment.

Sir E. May points out, <sup>(d)</sup> the difficulty which is found in distinguishing between public and private Bills in Parliament, and that many Acts included in the public general statutes are, if public <sup>(e)</sup>, not general, being confined to particular local areas.

Private Acts appear to have originated in the orders made by Parliament upon the petitions of individuals for the redress of private grievances for which there was no remedy at common law, which were in the nature of orders of the High Court of Parliament. "As the limits of judicature and legislation became defined, the petitioners applied more distinctly for legislative remedies" <sup>(f)</sup>.

"From the reign of Henry IV., the petitions addressed to Parliament prayed more distinctly for peculiar powers besides the general law of the land and for the special benefit of the petitioners. Whenever these were granted the orders of Parliament, in whatever form they may have been expressed, were in the nature of private Acts, and after the practice of legislating by Bill and statute had grown up in the reign of Henry VI., these special enactments were embodied in the form of distinct statutes" <sup>(g)</sup>.

[But it is not until 31 Henry VIII. (1539) that the distinction between public Acts and private Acts is for the first time specifically stated on the enrolment in Chancery <sup>(h)</sup>.]

The functions of Parliament in passing private Bills have always retained the mixed judicial and legislative character of ancient times, and, with certain exceptions, all Bills which are defined as private by the Standing Orders of either House, are still required to be brought in by petition <sup>(i)</sup>. ["In passing private Bills," says Sir Erskine May, "Parliament still exercises its legislative functions, but its proceedings partake also of a judicial character. The persons whose private interests are to be promoted appear as suitors for the Bill, while those who apprehend injury are admitted as adverse parties in the suit. Many of the formalities of a court of justice are maintained . . . and the solicitation of a Bill in Parliament has been regarded by Courts of equity so completely in the same light as an ordinary suit, that the promoters may be restrained by injunction from proceeding with a Bill the object of which was to set aside a covenant" <sup>(k)</sup>. It was said in *Ex parte Hartridge* (1870),-

<sup>(d)</sup> Parl. Pract. (10th ed.) 634.

<sup>(e)</sup> *Ante*, p. 64. [As to the U.S., see Sedgwick, Statutory Law (2<sup>nd</sup> ed.), 24--27.]

<sup>(f)</sup> Parl. Pract. (10th ed.), p. 494; 1 Cliff. 270; Ilbert, Legislative Methods and Forms, p. 28.

<sup>(g)</sup> Parl. Pract. (10th ed.) 644, referring to statutes of the realm published under the direction of the Record Commission.

<sup>(h)</sup> [1 Rev. Statt. (1st ed.), Intr. p. xii.; see also a learned note to *R. v. Milton* (1843), 1 C. & K. 59, note <sup>(b)</sup>; Cruise's Digest, vol. v. p. 1, tit. Private Act; and Comyns, Dig. tit. Parliament, R. 7.]

<sup>(i)</sup> The present classification is given in detail in Parl. Pap. 1906—C—No. 108, p. 51.

<sup>(k)</sup> Parl. Pract. (10th ed.) 645.



5 Ch. App. 671, 679, that although the Court of Chancery "has the power to act *in personam*, and, if a proper case should be proved, to restrain any person from making an improper application to Parliament" for a private Act, still "it is difficult to conceive or define what are the cases in which it would be proper for the Court to exercise that power," and there is no record of a case in which this alleged power has been exercised.]

The views of Lord Coke (1 Inst. 98 a) as to general statutes have been regarded as pointing to the following important distinctions between public or general and particular or private statutes (l) :—

(1) Their several degrees of notoriety :—"The judges may and ought to take notice of public Acts without pleading, but private Acts must be pleaded." But there are some exceptions to both parts of this rule.

(a) Some public Acts must still be pleaded, *e.g.* those Acts which entitle a person sued for a wrong to plead the general issue must specify any statute under which he pleads not guilty of the alleged wrong (m).

(b) Since 1850 local and personal Acts printed by public authority have ceased to be private from the point of view of judicial notice (13 & 14 Vict. c. 21, s. 7; 52 & 53 Vict. c. 63, s. 9).

(2) The mode of trial :—"The existence of a public Act must be tried by the judges, who are to inform themselves in the best manner they can. But a private Act may be put in issue, and shall be tried by the record" (n).

(3) A private Act will not bind strangers though it is without a saving of their rights (o). The answer to this question raised depends on the nature of the rights created by the private Act.

[A public Act never required any proof (p), and where it is necessary to refer to one, a copy is not given in evidence, but merely referred to to refresh the memory, and the person citing it cannot be required to put in a King's printer's copy (q). But it used to be held necessary to prove all private Acts, on the ground that though every man is bound to take notice of all Acts which concern the kingdom at large, he is not presumed to be cognisant of those which merely concern the private rights of another. "Originally," as Lord Lyndhurst said in *Woodward v. Cotton* (1834), 1 C. M. & R. 44, 48, "private Acts were required to be proved by a copy examined with the Parliament

(l) [He does not use the terms "public" and "private," but "general" and "particular": *Holland's case* (1597), 4 Co. Rep. 76 a.]

(m) Most of these Acts are repealed by 56 & 57 Vict. c. 61.

(n) *Vide ante*, pp. 46, 47.

(o) 1 Co. Litt. (ed. Thomas), p. 25, note (16). *Vide infra*, p. 466.

(p) *Vide ante*, p. 35.

(q) *Forman v. Dawes* (1841), Car. & M. 127.

Roll." They may also be proved by means of a transcript or of an exemplification under the Great Seal (*r*). The old modes of proof are still necessary, if it is required to prove a private Act which has not been printed by the King's printer (*s*). By sect. 3 of the Evidence Act, 1843 (8 & 9 Vict. c. 113), "all copies of private and local and personal Acts, if purporting to be printed by the printers to either House of Parliament, shall be admitted as evidence thereof by all courts, judges, justices, and others, without any proof being given that such copies were so printed" (*t*).]

The legal distinction between public and private Acts is still important for three reasons:—

- (a) As to judicial notice.
- (b) As to pleading.
- (c) As to construction.

For purposes of judicial notice all Acts passed after 1850 are deemed public Acts unless the contrary is declared therein (*u*). But as to prior Acts the question may still arise whether they are public or private, and further questions arise as to the effect of Brougham's Act, and the Interpretation Act, 1889, on the pleading and construction of private Acts.

Grounds of  
distinction  
between  
public and  
private Acts.

[Blackstone (*v*) defines private or special (*x*) Acts "to be rather exceptions than rules, being those which only operate upon particular persons and private concerns, such as the Romans entitled *senatus decreta*, in contradistinction to *senatus consulta*, which regarded the whole community." This definition, so far as it relates to Acts prior to 1851, seems to be generally borne out by the decisions of the judges. But it has some curious results (*y*).] Thus, doubts existed till 1778 (19 Geo. 3, c. 44, s. 4) whether the Toleration Act (1 Will. & Mary, c. 18) was a public or a private Act. [In *Dawson v. Paver* (1849), 7 Hare,

(*r*) *Ante*, p. 35.

(*s*) In *Doe d. Bacon v. Brydges* (1844), 13 L. J. C. P. 209, the action was based on a Disgavelling Act alleged to have been passed in 2 & 3 Edw. 6, but not entered in the Statute Roll. It therefore became necessary (1) to prove that such an Act really did pass, and (2) to give secondary evidence of its contents. For the first purpose a calendar was put in purporting to be made in 1640, containing sixty titles of statutes of 2 & 3 Edw. 6, of which No. 40 purported to be an Act for disgavelling lands in Kent. For the second purpose there was tendered as evidence a special verdict found in 13 & 14 Car. 2, referring to the alleged Act, and a copy of an Act purporting to be the Act in question found among the muniments of title of a Kentish landowner. The Court rejected the special verdict as inadmissible, and, ordering a new trial, did not pass judgment on the other points.

(*t*) *Ante*, p. 35; and see *Greswold v. Kemp* (1842), Car. & M. 635.

(*u*) Int. Act, 1889 (52 & 53 Vict. c. 63), s. 9, *post*, Appendix C.

(*v*) 1 Comm. 85. See also Stephen's Comment. (5th ed.), p. 70; and Bacon's Abr. tit. Statutes [F].

(*x*) *Vide ante*, p. 56.

(*y*) ["It seems not a little extraordinary that a statute [23 Hen. 6, c. 9] which concerns the administration of the public justice of the whole kingdom should ever have been construed to be a private statute:" 2 Williams' Saunders (ed. 1871), p. 454.]

415, Wigram, V.-C., said, as to the distinction between a public and a private Act: "Whether an Act is public or private does not depend upon any such formal consideration as whether it has a clause declaring that it shall be deemed a public Act, but upon the substantial considerations of the nature of the case." In *Jones v. Aven* (1696), 1 Ld. Raym. 119, it was held that 22 & 23 Chas. 2, c. 20 (an Act for the relief of insolvent debtors), was a public Act, for the following reasons: "1. Because all the people of England may be concerned as creditors to these insolvents. 2. It is an act of charity, and therefore ought to have a more candid interpretation. 3. It is an Act too long and difficult to be pleaded at large, so that it would put these poor people to a greater expense than they could bear to plead it specially" (z). In *Ingram v. Foote* (1701), Ld. Raym. 709, an Act of pardon was held not to be a general Act. In *Kirk v. Nowell* (1788), 1 T. R. 124, Buller, J., said: "Though it be true that Acts of Parliament relating to trade in general are public Acts, yet a statute which relates only to a certain trade is a private one." If a private Act be referred to or in any way recognised by a subsequent public Act, the private Act must afterwards be considered as being a public Act. This was first decided in *Saxby v. Kirkus* (1753), Buller, N. P. 224, and this decision was afterwards acted upon in *Samuel v. Evans* (1789), 2 T. R. 573. An Act has been held to be a public one if the Sovereign or the Prince of Wales is specially named in it. Thus, in *R. v. Buggs* (1694), Skinner, 429, it was held that 2 & 3 Ph. & Mar. c. 11, which inflicted a penalty upon all persons, not being cloth-workers, who used the trade of dyers or weavers, was a public Act, as the forfeiture was to the King, and so the King was concerned (a). Similarly, in *Morris v. Hunt* (1819), 1 Chitt. (K. B.) 453, it was objected that 53 Geo. 3, c. 152, which was an Act to amend the law respecting the expenses of the hustings and poll-clerks so far as regards the city of Westminster, was a private Act, but Abbott, C.J., said: "It relates to a branch of the Legislature of the kingdom, and that is sufficient to give it the character and operation of a public Act. . . . It has been held [in 8 Co. Rep. 28 b] that an Act relating to the Prince of Wales' rights in the Duchy of Cornwall is a public Act, by reason of the rank and importance of the personage to whom it relates. By parity of reasoning, the Act in question, from its nature, is a public Act." Acts of a local nature have been held to be public Acts on account of the publicity of the subject-matter treated of by them. *E.g.* the Act of Bedford Levels (b), and also the Act for rebuilding

(z) Cf. *Brett v. Beales* (1829), M. & M. 421, *post*, p. 452.

(a) *Willion v. Berkeley* (1560), Plowd. 231; see *Barrington's case* (1611), 8 Co. Rep. 136 b, 138 a; *Att.-Gen. v. Ball* (1846), 10 Ir. Eq. Rep. 161, Brady, C.

(b) Buller's *Nisi Prius*, 225; *Dupays v. Shepherd* (1698), 12 Mod. 216; Gilbert on Evidence, 13; Pothier (ed. Evans), ii. 152.

Tiverton (c). And in *Riddle v. White* (1793), 1 Anstr. 281, at p. 293, an Inclosure Act was held to be a public Act because by it "the Legislature bind the land and change its nature, and thereby the rights of many persons who could not be parties are bound with it." The insertion in a private Act of a section requiring it to be judicially noticed does not necessarily make it a public general Act. The effect of a clause of this kind was considered in *Hesse v. Stevenson* (1803), 3 B. & P. 565. There a bankrupt under the provisions of a special Act assigned a patent which he had obtained before his bankruptcy. The Court held that the patent had, prior to the Act, vested in his assignees, and that the Act did not enlarge his title, although it decided that the patent was vested in the bankrupt. Lord Alvanley said, at p. 578: "But though the Act be public, it is of a private nature. The only object of the proviso for making it a public Act is that it may be judicially taken notice of instead of being specially pleaded, and to save the expense of proving an attested copy. But it never has been held that an Act of a private nature derives any additional weight or authority from such a proviso: it only affects Koops [the bankrupt] and those claiming under him, and authorises him to do certain acts which by the letters patent he could not have done. . . . It is not, then, possible to consider this Act as giving any title to Koops which he had not at the time when it was passed. Such has been the construction which has always been put upon Acts of Parliament of this nature." The same views have been expressed by Lord Tenterden in *Brett v. Beales* (1829), 1 M. & M. 416, 425, after consulting the Court of King's Bench; and by Lord Abinger in *Ballard v. Way* (1836), 1 M. & W. 520, 529; and were adopted in Ireland by Brady, C., in *Att.-Gen. v. Ball* (1846), 10 Ir. Eq. Rep. 146, and *Att.-Gen. v. Marrett* (1846), 10 Ir. Eq. Rep. 167.

In *Ballard v. Way* (1836), 1 M. & W. 520, it was proposed to put in evidence the Borough Market Act (4 & 5 Will. 4, c. xlv.) in an action with respect to premises named in the schedule to the Act, on the ground that the purchaser of the premises had notice of the provisions of the Act. Lord Abinger said (p. 529): "I consider that these Acts do not affect all mankind with the knowledge of what is contained in them."

[In *Brett v. Beales* (1829), 1 M. & M. 416, it was contended that 52 Geo. 3, c. 141, must be proved by an examined copy of the Act from the Parliament Roll, and could not be proved by a King's printer's copy, although by sect. 166 it is called a public Act, and that it could be put in evidence to prove the existence of the tolls to which it referred. Lord Tenterden held (p. 425) that the words making the Act public only applied to the forms

of pleading (and authentication), and did not vary the general nature and operation of the Act; and secondly, that the power to levy tolls did not make the Act public, as it extended only to persons using the navigation.] The latter reasoning applies to all railway Acts.

But all these decisions are prior to Brougham's Act (13 & 14 Vict. c. 21); and in *Aiton v. Stephen* (1876), 1 App. Cas. 456, Lord Cairns described a local Act (8 & 9 Vict. c. xxv.) as "an Act which in the first instance assumed the shape of a private Bill, but which must be judicially noticed as a public Act, and must have all the operation of a public Act." This *dictum*, so far as it goes, is against the decisions already quoted, so far as they turn on the question of the public having notice of the provisions of such Acts, but it deals only with the publicity, and not with the generality, of the Act under discussion.

[Some Acts which go through Parliament as private Bills are when passed called "public, local, and personal," or merely "local and personal." This designation was first applied in 1797, when the House of Lords resolved that the King's printer should class the public general statutes and the special, local, and private in separate volumes; and on May 8, 1801, a resolution was passed by the House of Commons, and agreed to by the House of Lords, that the general statutes and the "public, local, and personal" in each session should be classed in separate volumes (*d*). The term "local and personal Act" was first used by the Legislature in Sir Frederick Pollock's Act (5 & 6 Vict. c. 97), by which certain special provisions were made with regard to Acts of this kind. But it appears that no definite rule can be laid down as to whether an Act is to be considered "local and personal" or not, for it does not necessarily follow that because an Act is not printed among the local and personal Acts it will be held not to be of a local and personal nature. "Whether an Act is printed in one part of the statute-book or another depends," said Pollock, C.B., in *Richards v. Easto* (1846), 15 M. & W. 244, 248, "upon whether certain fees have been paid upon it or not" (*e*). Thus, in *Cock v. Gent* (1843), 12 M. & W. 234, the Court held that 47 Geo. 3, c. xxxv., which empowered certain commissioners to adjudicate on demands not exceeding a certain amount made by any persons against defendants resident within certain limits, but which had a clause making it a public Act, "exactly met the description of a local and personal Act." In *Barnett v. Cox* (1847), 9 Q. B. 617, the Court held that the

Local and  
personal Acts.

(*d*) [See *Richards v. Easto* (1846), 15 M. & W. 244, 250, Parke, B.; and *Shepherd v. Sharp* (1856), 25 L. J. Ex. 255, Coleridge, J.]

(*e*) Since 1868 public Acts of a local character have been printed with the local Acts. But in the Parliament Roll the Acts are numbered consecutively without regard to whether they are general, local, personal, or private. *Idem ante*, p. 57.

Metropolitan Police Acts are not of a local and personal nature, because of "the public importance of the rights that they maintain, and the generality of their application to all the Queen's subjects within the Metropolitan Police District." But this case must be read subject to the observations of Bowen, L.J., in *R. v. London County Council*, (1893) 2 Q. B. 454, 464: "That decision did not find favour with the Court of Exchequer in the case of *Moore v. Shepherd* (1854), 24 L. J. Ex. 28, and was discussed in the Exchequer Chamber in *Shepherd v. Sharp* (1856), 25 L. J. Ex. 254. In the latter case it is pointed out that if the Metropolitan Police Acts and Acts of that class are not local and personal, it is because they affect the administration of law and justice, and therefore they are not local, because, although the place where justice is administered may be localised, the administration of justice touches the whole community, and they are not personal, because although the administration of justice may be concerned with the individual, yet really it affects the whole of the Queen's subjects. All Acts which deal with the administration of justice differ *in toto* from the class of local and personal Acts. They are not limited in the true sense either as regards place or persons."

Act may be partly public and partly private.

[In *Richards v. Easto* (1846), 15 M. & W. 244, it was held that an Act may be in part public and in part private. And this principle was recognised in several early cases. Thus, in *Ingram v. Foote* (1701), 12 Mod. 613, Holt, C.J., said: "Whereas it is urged that this Act concerns the King's revenues, therefore it is general law; the difference *per luy* is, when an Act concerns the King's revenues for the King's advantage, it is general, *secus* where it concerns it in order to a diminution thereof to the advantage of particular persons. And an Act of Parliament may be general in part and particular in other part." Again, in an *Anonymous case* (1698), 12 Mod. 249, Holt, C.J., said: "An Act of Parliament concerning the revenue of the King is a public law, but it may be private in respect to some clauses in it relating to a private person." The doctrine laid down in these three cases and in *Shepherd v. Sharp*, 25 L. J. Ex. 254, has been adopted by the Court of Appeal in *R. v. London County Council*, (1893) 2 Q. B. 454. [In the case of *Ex parte Gorely* (1864), 34 L. J. Bank. 1, it was held that sect. 83 of 14 Geo. 3, c. 78, applied generally to the whole of England, although the remainder of the Act was limited in its operation to the metropolitan district. "When we approach the 83rd section," said Lord Westbury, "we find that the enactment therein contained is heralded by a particular preamble of its own, which preamble recites a general and universal evil as being the occasion of its passing. I think, therefore, the just conclusion is that this enactment is intended to be general—is intended to meet a general and not a local evil." The decision in this case is of

small authority since the doubts cast upon it by Lord Watson in *Westminster Fire Office v. Glasgow Provident Society* (1888), 13 App. Cas. 699, 716. But the construction of Lord Westbury has received some Parliamentary support from the fact that the sections in question were excepted from the general repeal of 14 Geo. 3, c. 78, by the Metropolitan Building Acts, and are by the Short Titles Act, 1896, given the short title of the Metropolitan Building Act, 1774.

In *Herron v. Rathmines and Rathgar Improvement Commissioners*, (1892) App. Cas. 498, the question raised was as to the rights of the undertakers to interfere with private property under the Rathmines and Rathgar Water Act, 1880 (43 & 44 Vict. c. cxxxviii.). Lord Halsbury said (p. 501): "My Lords, this case raises a most serious and important question—a question not confined to the immediate parties to the litigation, but which involves a principle of construction of private Bill legislation having very wide consequences. It is necessary, therefore, to consider the system of legislation of which the Act of Parliament now in question is an example. It may be stated generally that Parliament, in passing a private Act, looks to the public advantage and security, and looks to the interference with private rights. Where a work of any kind has to be constructed, Parliament has made an elaborate set of provisions, intended to secure to the public the advantages which the promoters propose as the reason for legislation, and as the consideration for the rights of the persons affected, or sought to be affected, by the intended legislation. In dealing with the latter class of questions it has been said that the particular provisions may rather be regarded as words of contract to which the Legislature has given its sanction than as the words of the Legislature itself."

In speaking of 14 & 15 Vict. c. xciv., relating to mining customs in Derbyshire, Lord Blackburn, in *Wake v. Hall* (1883), App. Cas. 195, 198, said: "The articles and customs by this Act established are contained in the first schedule to it, and whether the customs there mentioned were really ancient or not, and whether they were such as would before the passing of this Act have been held reasonable or not, I think that since the passing of that Act they have the force of statute law" (f). Perhaps it would be more accurate to say that such customs or franchises are superseded by or merged in the Parliamentary grant (g).

Effect of local Act on customs.

Inclosure Acts until the end of the last century were usually treated as purely private Acts. Since then they have been treated as public, local, and personal, and the effect of recent legislation giving control to the Board of Agriculture over inclosures is to make them of public concern. The accepted

Inclosure Acts.

(f) For an attempt to infer a lost local Act to support a custom, vide *Chilton v. Corporation of London* (1873), 7 Ch. D. 735.

(g) See *New Windsor Corporation v. Taylor*, (1899) A. C. 41; ante, p. 280.

canons for their construction, when they deal with the rights of owners of the surface soil and the subjacent minerals, are thus stated by Chitty, J., in *Bell v. Earl of Dudley*, (1895) 1 Ch. 182, 185, a case turning on the Kingswinford Inclosure Act, 1784 (24 Geo. 3, c. xviii., private). "Questions of this kind turning on Inclosure Acts have often come before the Courts in recent years. The Acts which have thus received judicial interpretation have not been drawn on the same model; when compared with one another they have presented points of resemblance and difference leading to different results. The Act before me in some respects resembles and in others differs from any of the Acts the meaning of which has been ascertained by the Court. *Each Act has to be interpreted according to its own provisions.* The leading authority relied on by the petitioner is *Bell v. Love* (h), a decision of the Court of Appeal which was approved by the House of Lords (i). The leading authorities cited for the defendant are *Duke of Buccleuch v. Wakefield* (k) and *Consett Waterworks Co. v. Ritson* (l), where the decision of the Divisional Court was reversed by the Court of Appeal (m). . . . These authorities afford great assistance, and serve as guides in travelling through the various clauses of the Act of Parliament. The result appears to be that the method adopted in construing these Acts may be stated as follows: When, as here, the ownership of the minerals and the surface is severed, the *prima facie* inference is that the owner of the surface shall enjoy the surface allotted and shall have the common right of support for his tenement. This inference is strong; in order to rebut it the burden lies on the owner of the minerals to show affirmatively and by clear words that he has the right of letting down the surface. When clear words are spoken of, it is not meant that the Act must say in express terms that the mineral owner may let down the surface. That such express words are not required is shown by *Duke of Buccleuch v. Wakefield* and by the decision of the House of Lords on a Scotch instrument in *Buchanan v. Andrew* (n). The presence or absence of a compensation clause is an important element (o); the *prima facie* inference in favour of the surface owner is strengthened by the absence of a compensation clause; the presence of a limited compensation clause is not of itself sufficient to rebut the inference. There was such a limited clause in *Bell v. Love*. . . . Such, stated shortly, appears to be the method pursued in interpreting Acts of this class. Whether the propositions I have stated ought to be called a method of interpretation or to be termed reasons or rules, or (as Lindley,

(h) (1883), 10 Q. B. D. 547.

(i) (1884), 9 App. Cas. 286.

(k) (1869), L. R. 4 H. L. 377.

(l) (1888), 22 Q. B. D. 318, 702.

(m) Not reported on the point in question.

(n) (1873), L. R. 2 H. L. (Sc.) 286.

(o) See *L. N. W. R. v. Evans*, (1893) 1 Ch. 16.



L.J., said in *Consett Waterworks Co. v. Ritson*) ‘subordinate rules’ for construing the Act, is of no moment; the object is the same whatever be the correct phrase: that object is to ascertain the intention of the parties to the contract embodied in the Act of Parliament.” But this rule of interpretation is not applied so as to deprive the owner of the minerals of his common law right of necessity to break the surface for the purpose of working the minerals, even when no compensation clause is inserted (*p*). And it has been held that Inclosure Acts vest the sporting rights over inclosed land in the allottees, unless they are specially reserved to the lord (*q*), by virtue of the rule that a claim in derogation of freehold must be read strictly against the person making it.

2. “When the construction is perfectly clear,” said Lord Esher in *Altrincham Union v. Cheshire Lines Committee* (1885), 15 Q. B. D. 603, “there is no difference between the modes of construing a public Act and a private Act, the only difference [which at any time exists being] as to the strictness of the construction to be given to it when there is any doubt as to the meaning.”

Construction of public and private Acts, how far alike.

[“Private Acts,” says Blackstone (*r*), “have been often resorted to as a mode of assurance where, by the ingenuity of some and the blunders of other practitioners, an estate is so grievously entangled by a multitude of resulting trusts, springing uses, executory devises, and the like artificial contrivances—a confusion unknown to the simple conveyances of the common law—that it is out of the power of either the courts of law or equity to relieve the owner. . . . A law thus made, though it binds all parties to the Bill, is yet looked upon rather as a private conveyance than as the solemn Act of the Legislature.”] In this opinion he is supported by Lord Hardwicke in *Hornby v. Houlditch* (1737), cited 1 T. R. 96, 97 (*s*). [Such private Acts are not, therefore, to be construed in precisely the same way as public Acts, but rather like a conveyance or a contract, “according,” as Lord Kenyon said in *Townley v. Gibson* (1789), 2 T. R. 705, “to the intention of the parties.” Therefore, in order to construe it, “we may,” as Lord Wensleydale said in *Rowbotham v. Wilson* (1860), 8 H. L. C. 347, 363, “look at the surrounding circumstances at the date of it,” just as though it were an agreement. So, if a private Act contains a proviso which, taken literally, is unreasonable, “words not inconsistent with the words used [in the proviso] may be interpolated to give it a reasonable construction.” So said Channell, B., in *Makin v. Watkinson* (1870), L. R. 6 Ex. 28, with regard to the construction of a

Private Acts for the purpose of assurance construed as conveyances.

(*p*) *Hayles v. Pease and Partners, Ltd.*, (1899) 1 Ch. 567, Stirling, J.

(*q*) *Duke of Devonshire v. O'Connor* (1890), 24 Q. B. D. 468, 473; *Ecroyd v. Couthard*, (1898) 2 Ch. 358 (C. A.).

(*r*) 2 Comm. 344. He is speaking of Estate Acts.

(*s*) Cf. *Lucy v. Levington* (1671), 1 Vent. 175.

covenant entered into between two contracting parties; and "this doctrine of *Makin v. Watkinson*," said Brett, J., in *London and South-Western Rail. Co. v. Flower* (1876), 1 C. P. D. 77, 85, "is as applicable to the construction of a [private] Act of Parliament as to that of an ordinary contract." In accordance with this rule of construction, an agreement entered into by the promoters of a private Bill will not be upset by the private Act when it comes into force, although the Act may contain some stipulation which is contrariant to the agreement. Thus, in *Savin v. Hoylake Rail. Co.* (1865), L. R. 1 Ex. 9, it appeared that the plaintiff had agreed with the promoters of a railway Bill to bear the costs of obtaining it, but the Bill, when passed, was found to contain the usual clauses directing the railway company to pay the costs of obtaining the Bill; consequently, the plaintiff argued that the Act upset the previous agreement. But the Court held otherwise. "A private Act of Parliament," said Pollock, C.B., "is in the nature of an agreement between the parties; why, then, may not an agreement be made in derogation of that private Act, provided the agreement be not inconsistent with the public interest?"

Presumption  
against inter-  
ference with  
private rights  
by private  
Acts.

[If a private Act is passed empowering interference with private property or private rights, the rights of private individuals *may* be invaded without any notice having been previously given to them by the applicants to Parliament, and notwithstanding that they have no opportunity given them of opposing the passing through Parliament of the Act conferring these powers. "When an Act of this description [19 & 20 Vict. c. lxx.] is obtained by a company for purposes of profit, to confer upon them rights and powers which they would not have at common law, the provisions of such a statute must be somewhat jealously scrutinised, and I think that they ought not to be held to possess any right unless it be given in plain terms or arise as a necessary inference from the language used" (t). But if the language of the private Act is at all ambiguous, "every presumption," said Best, C.J., in *Scales v. Pickering* (1828), 4 Bing. 448, 452, "is to be made against the company and in favour of private property, for if such a construction were not adopted, Acts would be framed ambiguously in order to lull parties into security." For "it is to be observed," as Tindal, C.J., said in *Parker v. Great Western Rail. Co.* (1844), 7 Scott N. R. 835, 870, "that the language of these Acts of Parliament is to be treated as the language of the promoters of them. They ask the Legislature to confer great privileges upon them, and profess to give the public certain advantages in return. Therefore Acts passed under such circumstances should be construed strictly against the parties obtaining them, but liberally

(t) *Scottish Drainage, &c. Co. v. Campbell* (1889), 14 App. Cas. 139, 142, Lord Herschell. Cf. *Lamb v. North London Rail. Co.* (1869), 4 Ch. App. 522, 528, Selwyn, L.J.

in favour of the public." "If there be any reasonable doubt," said Lord Cottenham in *Webb v. Manchester and Leeds Rail. Co.*, 4 My. & Cr. 116 (*u*), "as to the extent of the powers [given to the railway company in their private Act], they must go elsewhere and get enlarged powers, but they will get none from me by way of construction of their Act of Parliament." "A company," said Lord Ellenborough in *Gildart v. Gladstone* (1809), 11 East, 675, "in bargaining with the public, ought to take care to express distinctly what payments they are to receive, and the public ought not to be charged unless it is clear that it was so intended." In *Stourbridge Canal Co. v. Wheeley* (1831), 2 B. & Ad. 792, the plaintiffs' canal had been made under 16 Geo. 3, c. 28, and an action was brought to recover compensation from the defendants for using the plaintiffs' canal in a manner not strictly contemplated in their Act. In deciding against the plaintiffs' claim, Lord Tenterden said as follows: "The canal having been made under the provisions of an Act, the rights of the plaintiffs are derived entirely from that Act. This, like many other cases, is a bargain between a company of adventurers and the public, the terms of which are expressed in the statute, and the rule of construction in all such cases is now fully established to be this, that any ambiguity in the terms of the contract must operate against the adventurers and in favour of the public, and the plaintiffs can claim nothing that is not clearly given them by the Act." In *Wear River Commissioners v. Adamson* (1877), 2 App. Cas. 753, 766, Lord Blackburn said: "The first inquiry for your lordships is, are we justified in putting a different construction on the words of an Act passed at the instance of particular promoters (or, as it is commonly called, an Act local and personal and public) from that which would be put on similar words in a general Act? To some extent I think we are. If in a local and personal Act we found words that seemed to express an intention to enact something quite unconnected with the purpose of the promoters and which the committee would not (if it did its duty) have allowed to be introduced into such an Act, I think the judges would be justified in putting almost any construction on the words which would prevent its having that effect." [If in a private Act clauses are introduced to preserve general rights, such clauses will be construed so as to protect such rights as far as possible. Thus, in *Clowes v. Staffordshire Potteries, &c. Co.* (1873), 8 Ch. App. 125, it appeared that a company had been empowered by a private Act to construct waterworks. The Act contained a clause protecting generally all rights which riparian owners possessed before the passing of the Act, and it was held that such a clause prevented the company from fouling a stream from which they were empowered to take water. "If a public

(*u*) Cited in *Dowling v. Pontypool Rail. Co.* (1874), L. R. 18 Eq. 714.

company," said Mellish, L.J., "or any private individuals, obtain an Act of Parliament which they say enables them to take away the common law rights of any person, they are bound to show that it does it with sufficient clearness."]

Private Acts  
considered as  
"contracts  
with the  
public."

The same considerations apply to Acts purporting to impose a charge on private persons. "However, we are dealing now, not with a public, but a private Act of Parliament, and I have always understood, with reference to private Acts as contradistinguished from public Acts of Parliament, that if a charge is imposed upon the person of an individual, it must be so imposed in clear and express terms, and not left to implication. My lords, the original Act seems to have been prepared with very considerable care, and I would say with a due regard to the rights and interests of others. But, after all, the language is the language of the drainage company. I presume they had no opponents. The Act presents the language of the company, and of the company alone" (x).

Railway and  
Canal Acts.

[In *Blackmore v. Glamorgan Canal Co.* (1832), 1 My. & K. 154, 162, Lord Eldon said as to Railway and Canal Acts: "When I look upon these Acts of Parliament I regard them all in the light of contracts made by the Legislature on behalf of every person interested in anything to be done under them (y), and I have no hesitation in asserting that, unless that principle is applied in construing statutes of this description, they become instruments of greater oppression than anything in the whole system of administration under our Constitution. Such Acts have now become extremely numerous, and from their number and operation they so much affect individuals, that I apprehend that those who come for them to Parliament do in effect undertake that they shall go and submit to whatever the Legislature empowers and compels them to do, and that they shall do nothing else; that they shall do and shall forbear all that they are required to do, and forbear as well with reference to the interest of the public as with reference to the interests of individuals." "To this language of Lord Eldon," said the Court of Error in *York and North Midland Rail. Co. v. R.* (1852), 1 E. & B. 858, "it is not necessary to take the least exception," if, that is, it is understood as simply meaning that "those who come for such Acts of Parliament do, in effect, undertake that they shall do and submit to whatever the Legislature empowers and compels them to do." The more correct way of speaking of the powers given by private Acts is put by Alderson, B., in *Lee v. Milner* (1837), 2 Y. & C. (Ex.) 611, 618, as follows:—"These Acts have been called Parliamentary bargains made with each of the landowners. Perhaps more correctly they ought

(x) *Scottish Drainage, &c. Co. v. Campbell* (1889), 14 App. Cas. 139, 149, Lord Fitzgerald.

(y) Accepted by Lord Halsbury, L.C., in *Herron v. Rathmunes and Rathgar Water Commissioners*, (1892) A. C. 498, 501.

to be treated as conditional powers given by Parliament to take the lands of the different proprietors through whose estates the works are to proceed. Each landholder has a right, therefore, to have the powers strictly and literally carried into effect as regards his own land, and has a right also to require that no variation shall be made to his prejudice in the carrying into effect the bargain between the undertakers and any one else." Likewise in the above-mentioned case of *R. v. York and North Midland Rail. Co.* (1852), 1 E. & B. 858, 864, the Court said: "It is said that a railway Act is a contract on the part of a company to make the line, and that the public are a party to that contract and will be aggrieved if the contract may be repudiated by the company at any time before it is acted upon. Though commonly so spoken of, railway Acts, in our opinion, are not contracts, and ought not to be construed as such: they are what they profess to be, and no more; they give conditional powers which, if acted upon, carry with them duties, but which, if not acted upon, are not either in their nature or by express words imperative (z) on the companies to whom they are granted." ]

But Acts relating to the construction of railways, gasworks, waterworks, or the like, are not merely Parliamentary bargains with the private persons whose property they affect, and the differences between their statutory provisions and private stipulations have been considered in a great many cases (a).

In *Davis v. Taff Vale Rail. Co.* (1895), App. Cas. 542, the company sued Davis in respect of rates and tolls alleged to be due under sect. 23 of the Barry Dock and Railways Act, 1888, and they contended that the Act was simply a contract between two railway companies regulating exchange of traffic, and did not affect rates to be paid by the public. On this Lord Halsbury said (p. 550): "It is said that these are private Acts. So they are; they are Acts which give great powers, and in giving them the Legislature has generally been careful to look to the rights of the public. It would be a very singular course of legislation to commit the interest of the traders of the district to be dealt with by two railway companies, so that if they agreed, the trader should have no remedy. Conveyance of goods by a railway company established by Act of Parliament is a public right, and the obvious meaning to my mind of the whole of these arrangements is that unless the Taff Vale Company carry at the rates which I have described as the prescribed rates, they shall have a competing line permitted; but this does not in the least degree interfere, to my mind, with the remedy of the trader himself, who, when he has been overcharged, should refuse to pay, or recover back when he has paid, an overcharge prohibited

(z) As to when permissive Acts are obligatory, see *ante*, p. 252.

(a) See *Corbett v. S. E. R.*, (1905) 2 Ch. 280, 286, Farwell, J.

by the Act of Parliament." And Lord Watson said (p. 552): "The provisions of a railway Act, even where they impose mutual obligations, differ from private stipulations in this essential respect, that they derive their existence and force, not from the agreement of the parties, but from the will of the Legislature; and when provisions of that kind are not limited to the interests of the parties mutually obliged, but impose upon both of them an obligation in favour of third parties who are sufficiently designated, I am of opinion that the obligation so imposed must operate as a direct enactment of the Legislature in favour of these parties, and cannot be regarded as a mere stipulation *inter alios* which they may have an interest, but have no title, to enforce. These observations are not meant to apply to any case where a private contract, made between two companies, is scheduled to, and confirmed by, the Act: because in such a case the form of the enactment might be held to indicate that it is to operate as a contract, but not otherwise" (b).

Private Act, if regarded as a contract between the parties, to be construed, like contracts, according to what is contained within its four corners.

It seems correct to describe those parts of an Act which affect particular persons as contracts between them and the promoters of the Act, whether the clauses were inserted, as is often the case, by mutual agreement, or were forced upon them by the Legislature (c). [If this view be adopted, we must simply look to see what the contract actually is, as contained within the four corners of the Act, and we must disregard anything that may have been said during the negotiation of the contract, or while the Bill was being discussed before a Parliamentary committee (d). "I cannot be assisted," said Wood, V.-C., in *Steele v. Midland Rail. Co.* (1865), 1 Ch. App. 282, "in the construction of the Act by knowing what took place before the committee when both parties were arguing face to face until at length the committee came to a conclusion." Neither will plans, which may have been exhibited (whether in pursuance of any standing order of either House of Parliament or not) with regard to the work, in any way bind the parties unless those plans are ultimately incorporated into the Act itself. This question, which appears to have been at one time open to some doubt (e), may be looked upon as now finally set at rest by the case of *North British Rail. Co. v. Tod* (1846), 12 Cl. & F. 722. In that case plans and sections of an intended railway had, in pursuance

(b) See hereon, *Corbett v. S. E. R.*, (1906) 2 Ch. 12, 20, Cozens-Hardy, L.J.; *Joseph Crosfield and Sons v. Manchester Ship Canal Co.*, (1905) A. C. 421.

(c) *Countess of Rothes v. Kirkcaldy Waterworks Commissioners* (1882), 7 App. Cas. 694, 707, Lord Watson; *Davis v. Taff Vale Rail. Co.*, (1895) A. C. 542, 552, Lord Watson.

(d) *Herron v. Rathmines and Rathgar Water Commissioners*, (1898) A. C. 498, 502, Halsbury, L.C.

(e) ["I found that what had certainly been very much the opinion of the profession in this country, namely, that the parties were bound by the exhibition of such plans, had met with a very wholesome correction by the doctrine laid down by Lord Eldon in *Heriot's Hospital case* (1844), 2 Dow. (H. L.) 301": *North British Rail. Co. v. Tod* (1846), 12 Cl. & F. 722, 732, Lord Cottenham.]

of standing orders of the House of Lords, been exhibited, and it appeared that according to these plans the railway would intersect the approach to the respondent's house at a point about 500 feet from his lodge and at a depth of about 15 feet below the surface. The respondent, relying on these representations, abstained from opposing the appellants' Bill in Parliament. After the Bill had received the royal assent the appellants served the respondent with a notice, by which it appeared that they intended to carry their railway across his approach in a totally different manner from that described in the plans and sections which they had deposited; consequently, the respondent applied to the Court for an injunction to restrain them from carrying out their undertaking in a manner different from that described in their plans. The Court below granted the injunction prayed for, but the House of Lords, on appeal, reversed this decision, and, in delivering his judgment, Lord Cottenham said as follows: "The plans which are required to be exhibited by the Standing Orders, except so far as they are made part of the Act, are entirely out of the question. When we are looking to what the rights of the parties are, we can only look to the Act of Parliament by which these rights are regulated. Plans or proceedings previous to the enactment can have no effect upon the enactments themselves." And Lord Campbell added: "What is the construction of the Act of Parliament? The Act of Parliament must be considered as overruling and doing away with everything that has taken place prior to the time when the Act of Parliament passed, and renders the representation or proposal of the company, pending the Act of Parliament, of no avail. Many cases have occurred in the common law courts in which it has been held that everything that takes place before a written contract is signed by the parties is entirely to be disregarded in construing the contract by which they are bound. If the respondent had been cautious . . . he would have had a special clause introduced into the Act to protect his rights. . . . But he abstained from introducing any such clause, and therefore he must be considered as having acceded to the company having all the powers which the Act confers upon them, under which powers they are at liberty to deviate in the manner proposed." But the Court of interpretation may consider the subject-matter with which Parliament was dealing, and the facts existing with respect to which Parliament was legislating (*f*).

Acts regulating railway and canal and water and gas companies contain provisions of several kinds. The main are—

- (1) Those affecting the internal constitution of the company.
- (2) Those regulating the dealings of the company with passengers or owners of goods to be carried.

Classification  
of contents of  
railway, &c.  
Acts.

(*f*) *Herron v. Rathmines and Rathgar Water Commissioners*, (1892) A. C. 498, 502.

(3) Those affecting the Crown or local authorities.

(4) Those empowering the acquisition of lands (*g*).

General  
scheme of  
private Act  
not controlled  
by clauses in  
nature of bar-  
gains with  
particular  
individuals.

Every private Act passed for the purpose of carrying out some general scheme (as, for instance, the making of a railway or the supplying of a certain district with water or gas) must contain general clauses, by which the general scheme is regulated, such coming under heads (1), (2), and (3). "Many of the provisions of Acts of Parliament constituting companies," said Bramwell, L.J., in *Att.-Gen. v. Great Eastern Rail. Co.* (1878), 11 Ch. D. 501, "are not provisions as between the companies and the public, but agreements among the shareholders *inter se*, which constitute their agreement of partnership, their instrument of settlement." As to heads (2), (3), the Act is substantially public and general. "Where an express statutory right is given to make and maintain a thing necessarily requiring support, the statute, in the absence of a context implying the contrary, must be taken to mean that the right to the necessary support of the thing constructed shall accompany the right to make and maintain it. More especially would this seem reasonable when the thing to be constructed is one of public advantage and utility, in which the public are to have rights. The maxim of good sense and law so stated becomes applicable with more or less stringency, according to the scope of the Act of Parliament. On the other hand, the Legislature cannot fairly be supposed to intend, in the absence of clear words showing such intention, that one man's property should be confiscated for the benefit of others or of the public without any compensation being provided for him in respect of what is taken compulsorily from him" (*h*).

The clauses under head (4) do not affect the public at large, but only the owners of lands through or near which the works of the company are carried. [They are sub-divided into two kinds of clauses—namely, those which are in the nature of private bargains with certain particular individuals, which we may call *particular* clauses; and those by which the object to be effected is regulated, which may be termed *general* clauses. In construing private acts the *particular* clauses ought not to have any effect upon the construction of the *general* clauses under any of the heads indicated. This rule of construction was enunciated by Lord Cairns in *East London Rail. Co. v. Whitechurch* (1875), L. R. 7 H. L. 81, 89, and was adopted by the House of Lords. "These clauses," said he, "are in the nature of private arrangements, put into the Act at the instance of particular parties, who either act with greater caution than other parties, or act with a desire to make a better bargain for them-

(*g*) "A railway company is an artificial person incorporated by statute, and the limits of its powers are prescribed either expressly or by implication by statute": *Corbett v. S. E. R.*, (1906) 2 Ch. 12, 20, Cozens-Hardy, L.J.

(*h*) *L. N. W. R. v. Evans*, (1893) 1 Ch. 16, 28, Bowen, L.J.; and *Davis v. Taff Vale Rail. Co.*, *ante*, p. 461.



selves than other parties have made. They are not put in by the Legislature as part of a general scheme of legislation which it desires to express, but they are in the nature of particular contracts, and ought not to have any effect upon the construction of a general clause" (i).

In *Mersey Docks and Harbour Board v. Henderson* (1888), 13 App. Cas. 595, the portions of a private Act relating to tonnage dues upon export and import were construed by reference to the Customs Acts in force at the time when the private Act was passed, inasmuch as they create the machinery and regulate the trade and commerce of the country in respect of export and import, and are therefore those from which the Legislature would naturally adopt the phraseology when imposing dock rates in respect of trade in goods to and from a port.

Reference to Acts *in pari materia*.

It is a common practice to schedule to private or special Acts agreements made between the undertakers and other persons, and to declare such agreements valid and binding between the parties thereto (k). The effect of so doing seems to be to make the agreements part of the statute, and usually (l) to exclude the possibility of contending that they are *ultra vires* as being beyond the powers of the contracting parties, or void as containing stipulations which would be illegal or void but for the statute (m), for the agreements by incorporation into the statute cease to be voluntary contracts, and acquire statutory effect. And in *Sevenoaks Rail. Co. v. L. C. & D. R.* (1879), 11 Ch. D. 625, Jessel, M.R., held that by an agreement so confirmed Parliament had ample power to create rights unknown to the ordinary law and incapable of creation by an ordinary contract (n). In such cases the ordinary canons of construction of contracts must be subordinate to those applying to the construction of statutes. But where the statute simply authorises or requires the making of the agreement *in futuro*, the above-stated considerations do not apply to its construction when made (o).

Effect of scheduling agreements to a private Act.

(i) As to effect of such clauses, see *ante*, pp. 460, 461.

(k) *E.g. Manchester Ship Canal Co. v. Manchester Racecourse Co.*, (1901) 2 Ch. 37 (C. A.).

(l) But see *Corbett v. S. E. R.*, (1906) 2 Ch. 12 (C. A.).

(m) See *Caledonian Rail. Co. v. Greenock and Wemyss Bay Rail. Co.* (1874), 10 R. 2 H. L. (Sc.) 347; *R. v. Midland Rail. Co.* (1887), 19 Q. B. D. 540, 550, Wills, J.

(n) *E.g.* as offending against the rule against *ultra vires* *Manchester Ship Canal Co. v. Manchester Racecourse Co.*, (1900) 2 Ch. 37, 50, Harwell, J.; (1901) 2 Ch. 37, 50, Williams, L.J.

(o) *G. W. R. v. Waterford and Limerick Rail. Co.* (1881), 17 Ch. D. 493 (C. A.).

## CHAPTER II.

## EFFECT OF PRIVATE ACTS.

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Private Acts  
do not bind  
strangers.

1. ["It is said in the books," said Wigram, V.-C., in *Dawson v. Paver* (1844), 5 Hare, 415, 434, "that public Acts bind all the Queen's subjects. But of private Acts of Parliament it is said that they do not bind strangers, unless by express words or necessary implication the intention of the Legislature to affect the rights of strangers is apparent in the Act." "If in a local and personal Act," said Lord Blackburn in *Wear River Commissioners v. Adamson* (1877), 2 App. Cas. 743, 766 (a), "we found words that seemed to express an intention to enact something quite unconnected with the purpose of the promoters, and which the committee would not, if it did its duty, have allowed to be introduced into such an Act, I think the judges would be justified in putting almost any construction on the words that would prevent its having that effect." In *Lucy v. Levington* (1671), 1 Ventr. 175, it was said that "every man is so far a party to a private Act as not to gainsay it, but not so as to give up his interest. 'Tis the great question in *Barrington's case* (1611), 8 Co. Rep. 136. The matter of the Act there directs it to be between the foresters and the proprietors of the soil, and therefore it shall not extend to the commoners to take away

(a) In that case, at p. 765, Lord Blackburn gives an account of the systematising of clauses in Bills of this kind by the action of the authorities of the Houses.

their common. Suppose an Act says, 'Whereas there is a controversy concerning land between A. and B. it is enacted that A. shall enjoy it: this does not bind others, though there be no saving clause, because it was only intended to end the difference between these two.'"]

[A private Act binds all parties named in it, whether or not they concurred in obtaining it. This was much discussed in the case of *Earl of Shrewsbury v. Scott* (1859), 6 C. B. N. S. 1. In 1719 a private Act, 6 Geo. 1, c. 29, was obtained to settle the Shrewsbury estates, and by sect. 8 of that Act it was enacted that the estates should always follow the title and should be inalienable; but the section contained a proviso that, if the first or any other son of the then Earl, or any the heirs male of any such son, should abjure the Catholic religion and become a Protestant, his disability to alienate should cease. In 1856 the then Earl, being tenant in tail, alienated the estates, and one of the grounds relied upon by the alienee was that the private Act of 1719 was not binding upon any tenant in tail, the tenant in tail in 1719 not having been a party to the Act. As to this argument, Cockburn, C.J., in his judgment said: "We have been reminded that a private Act of Parliament has been said upon high authority to be little more, if anything, than a private conveyance between those who are parties to it, and to a certain extent I agree in that proposition. Recitals in a private Act could never bind persons who were not parties to the Act (b). Provisions, however general in their terms, could not be held to affect the rights of parties who were not before Parliament, and whose rights were never intended to be affected. Thus, if a tenant for life should obtain power to convey an estate in fee, no Court would hold that it could have been the intention of the Legislature to bind a remainderman who was not a party to the Act or named in it. But if an Act in positive and express terms professes to affect, and does affect, the rights of parties named in it, it is quite impossible, as it seems to me, to maintain that a Court of law is not bound to give effect to the provisions of such an Act, although such parties may not have concurred in passing it."]

Private Act binds all parties named in it,

[A private Act binds all parties named in it, whether they have had notice of its introduction into Parliament or not. This was pointed out in *Edinburgh Rail. Co. v. Wauchope* (1842), 8 Cl. & F. 710. In that case the Lord Ordinary had appended to his interlocutor a note to the effect "that he is by no means satisfied that due Parliamentary notice was given to the pursuer previous to the introduction of the private Act for regulating the Edinburgh Railway Company . . . and that he should strongly be inclined to hold that rights previously established

whether or not they had notice of its introduction into Parliament.

(b) Cf. Sedgwick, *Statutory Law* (2nd ed.), 27, as to the law of the United States. As to recitals in a public Act, see *ante*, pp. 39—41.

could not be taken away by a private Act, of which due notice was not given to the party meant to be injured." As to this Lord Cottenham said (p. 720): "It appears that in the Court below an impression existed that an Act of Parliament might or might not be binding on parties according as there might or might not be proof that the individual to be affected by it had had notice of the Act while in progress through the two Houses [that the Standing Orders for the protection of private rights not having been complied with, the authority of the Act of Parliament itself would be affected (c)]. There is no foundation for such an idea, but such an impression appears to have existed in Scotland, and I express my clear opinion upon it, that no such erroneous idea may exist in future." And Lord Campbell added (p. 723): "The Lord Ordinary seems to have been of opinion that if this Act professed to take away Mr. Wauchope's rights, it would have had that effect only if due notice had been given him of the introduction of the Bill into the House of Commons, but that notice not having been given to him, it could not have such effect, but became wholly inoperative. I cannot but express my surprise that such a notion should ever have prevailed. There is no foundation whatever for it. All that a Court of Justice can do is to look to the Parliamentary Roll. If from that it should appear that a Bill had passed both Houses and received the royal assent, no Court of justice can inquire into the mode in which it was introduced into Parliament, or into what was done previous to its introduction, or what passed in Parliament during its progress in its various stages through both Houses."]

Private Act  
also binds all  
persons deal-  
ing with a  
company  
created by it.

2. "If need was," said Erle, C.J., in *Cahill v. London & N. W. Rail. Co.* (1861), 10 C. B. N. S. 154, at p. 172, "I should be prepared to hold that, where a company is created by Act of Parliament, having privileges and rights granted to them and liabilities and duties imposed upon them in respect of their incorporation, parties dealing with them must be taken to be cognisant of the provisions of the Act of Parliament granting those privileges and rights and imposing those duties and liabilities, although it be a private Act" (d). This dictum of Erle, C.J., which was acquiesced in by Willes, J., and Byles, J., is now well established as a statement of the law.

Inconsistency  
between two  
private Acts.

3. A provisional order confirmed by Parliament authorising an electric undertaking came into operation on June 27, 1892. It gave power to a municipal corporation to purchase the undertaking compulsorily, on terms of using or transferring to the undertakers such an amount of corporation stock as would "produce by the interest thereon an annuity of 5 per cent." on

(c) *L.c.* p. 720, Lord Brougham.

(d) It equally binds the company in dealing with such persons. *Davis v. Taff Vale Rail. Co.*, (1895) A. C. 542, 548, Lord Halsbury. Most of such Acts contain a clause requiring the undertakers to keep a copy at their office for inspection on demand.

capital properly expended. Another provisional order coming into operation on June 28, 1892, took away a power possessed but not exercised by the corporation to issue irredeemable stock. The statutes which confirmed the two orders received the royal assent on June 27, 1892. North, J., having determined as above the commencement of the two orders, held that the fact that the two Acts passed on one day did not absolutely constrain him to hold that they must be read as consistent. And upon the express terms of the two orders he held that the order which came latest into force took away the power to issue irredeemable stock recognised in the earlier order, and consequently had the effect of putting in abeyance the powers of purchase given by the earlier order (*e*).

4. In the absence of any indication of intention on the part of the Legislature, local Acts are not repealed by public general Acts (*f*). Repeal of special by general Act.

"There is another rule which has been laid down, which is a good rule if it is properly applied, namely, that where there has been a particular rule established by custom or by statute, where there is some particular law standing, and a subsequent enactment has general words which would repeal the particular law or particular custom if they were taken in all their generality, yet nevertheless the first particular law is not to be repealed unless there is a sufficient indication of intention to repeal it. It is not to be repealed by mere general words; the two may stand together, the first, the particular law, standing as an exceptional proviso upon the general law. And," he continued, "I think, on consideration, and after looking into the cases which have been referred to, that although the doctrine itself is sound, it was misapplied in this case" (*g*). He went on to point out that in all the cases cited there was a statute in favour of a particular class of persons or the property.

"It is well settled that where the promoters of a public undertaking have authority from Parliament to interfere with private property on certain terms, any person whose property is interfered with by virtue of the authority has a right to require that the promoters shall comply with the letter of the enactment so far as it makes provision on his behalf, and it is for the promoters to say that they have given him all that he can want, or something just as good as that which the Act required them to give, or even something still better, if he only knew his own

(*e*) *Mayor, &c. of Sheffield v. Sheffield Electric Light Co.*, (1898) 1 Ch. 203.

(*f*) *Fitzgerald v. Champneys* (1861), 30 L. J. Ch. 777; *vide ante*, pp. 311—315. The rule applicable in such cases is well stated in a Canadian case, *Ontario, &c. Rail. Co. v. Canadian Pacific Rail. Co.* (1887), 14 Ont. Rep. 422, by Ferguson, J.: viz., that where there are provisions in a special Act and a general Act on the same subject which are inconsistent, if the special Act gives a complete rule on the subject, the expression of the rule acts as an exception of the subject-matter of the rule from the general Act.

(*g*) *Garnett v. Bradley* (1878), 3 App. Cas. 967, Lord Blackburn.

interest. It is enough for him to show that the thing which is offered is not the thing which the Act said he was to have. It is too late to call for a new deal at that stage of the game, nor is it, I think, within the province of any tribunal to remodel arrangements sanctioned by Parliament, or to release conditions which the Legislature has thought fit to impose" (h).

Repeal of  
public Act by  
private Act.

[There is no positive rule (i) which prevents a public general Act from being repealed, either expressly or by implication, by a private or local and personal Act; but, as Malins, V.-C., said in *Perring v. Trail* (1874), L. R. 18 Eq. 88, 91, "a Court ought never to presume an intention to modify or repeal a public Act by a private one," for private Acts "demand peculiar vigilance, lest public laws be lightly set aside for the benefit of particular persons or places" (k).]

In *City and South London Rail. Co. v. London County Council*, (1891) 2 Q. B. 513, it was held that the Act regulating the undertaking of the company exempted them from the Metropolitan Building Acts (l). In *Uckfield U. D. C. v. Crowthorpe District Water Co.*, (1899) 2 Q. B. 664, it was held that the special Act of the Water Company passed in 1897 did not exempt their undertaking from the building clauses of the Public Health Act, 1875, on the ground that the special Act could not be regarded as inconsistent with the general Act (m). In *Surrey Commercial Dock Co. v. Mayor, &c. of Bermondsey*, (1904) 1 K. B. 474, it was held that the powers of interference and control over buildings given by sect. 76 of the Metropolis Management Act, 1855 (18 & 19 Vict. c. 120), were inconsistent with the powers conferred upon a dock company by their special Acts of 1864 and 1894, and that to the extent of the inconsistency the special Acts overrode the general Act (n). It is more accurate to describe the effect of a private on a public Act by saying that the former creates an exception or exemption than by saying that it effects a repeal.

Effect of  
local Acts on  
taxing Acts.

A local and personal Act does not repeal public Acts relating to taxation. The Mersey Docks and Harbour Act, 1857, s. 284, provides for the application of moneys collected,

(h) *Herron v. Rathmines and Rathgar Water Commissioners*, (1892) A. C. 498, 523, Lord Macnaghten.

(i) In May, Parl. Pract. (9th ed.) 753, it is stated that 7 & 8 Geo. 4, c. 31, was amended by 2 & 3 Will. 4, c. lxxxviii. (local and personal), and that in 1864 the City of London Tithes Act repealed a public Act of Henry VIII. Cf. *Coates v. R.*, (1900) A. C. 217.

(k) May, Parl. Pract. (9th ed.) 753.

(l) Cf. *London and Blackwall Rail. Co. v. Limehouse Board of Works* (1857), 26 L. J. Ch. 164; *London County Council v. London School Board*, (1892) 2 Q. B. 606.

(m) See also *London County Council v. Wandsworth and Putney Gas Co.* (1900), 82 L. T. 562; *Hornsey U. D. C. v. Smith*, (1897) 1 Ch. 843; *Heston Isleworth U. D. C. v. Grout*, (1897) 2 Ch. 306; *Ashton-under-Lyne Corporation v. Pugh*, (1898) 1 Q. B. 45, 49; *Lodge v. Mayor, &c. of Huddersfield*, (1898) 1 Q. B. 847, and ante, p. 290.

(n) For instances where a special Act is cut down by a general Act, see *Charing Cross, &c. Electric Corporation v. Woodthorpe* (1903), 88 L. T. 772; *Whitechapel Board of Works v. Crow* (1901), 84 L. T. 595.

levied, borrowed, and raised or received under the Act, and concludes: "Except as aforesaid, such moneys shall not be applied by the Board for any other purpose whatsoever." Sect. 285 provides for liability to local and parochial rates, but the Act is silent as to imperial taxation. It was thereupon contended in *Mersey Docks v. Lucas* (1883), 9 App. Cas. 891, that the Mersey Docks and Harbour Board were exempted from liability to income tax beyond the sum paid as interest on the debt incurred for the acquisition and working of their property. Lord Selborne said (o): "In advising the House in *Mersey Docks v. Cameron* (p) and [in] *Jones v. Mersey Docks* (q), my noble and learned friend [Lord Blackburn], who then delivered the opinion of the judges, which was adopted by the House in a case where there was no such special clause [as sect. 285], said: 'There are no negative words prohibiting the application of the rates to payment of the poor rates, and we think, in conformity with the decision in *Tyre Commissioners v. Chirton* (r), that enactments directing that the revenue shall be applied to certain purposes and no other are directory only, and mean that, after all charges imposed by law on the revenue have been discharged, the surplus or free revenue, which otherwise might have been disposed of at the pleasure of the recipients, shall be applied to these [the specified] purposes.'" After expressing full concurrence with the opinion quoted, Lord Selborne added (p. 902): "Even independently of the sound general doctrine laid down in the passage which I have read . . . it seems to me that the view expressed in the Court of Appeal (s) is perfectly right, and that it would be a very strange thing indeed, and wholly inconsistent with the principles, which are well established, as to the construction of Acts of Parliament, and I may say more especially of local and personal Acts of this nature, if duties given to the Crown, taxes imposed by the authority of the Legislature by public Acts for public purposes, were held to be taken away by general Acts of this kind in a local and personal Act, and an Act in which the Crown is nowhere mentioned so as to be bound by it. The addition of an express saving clause as to parochial and local rates cannot, in my opinion, prevent the application to public taxes of the principles which, upon the enacting words, would otherwise have been applicable." The same learned lord pointed out another difficulty, viz., that income tax is imposed in one sense in each year by the Continuance Acts, or the Acts varying the rate from time to time, and in another sense by the Income Tax Act, 1842, which is referred to and incorporated in subsequent Acts; so that the tax may be said to be imposed subsequently to any given local Act under which exemption is claimed (t).

(o) *L. c.* 901. (p) (1865), 11 H. L. C. 443, 480.

(q) *Ibid.*

(r) (1859), 1 E. & E. 516. (s) Not reported.

(t) Cf. *Income Tax Commissioners v. Pemsel*, (1891) A. C. 532, 591, Lord Macnaghten. In *Att.-Gen v. Midland Rail. Co.*, (1902) A. C. 171, an unsuccessful.

5 & 6 Vict.  
c. 35.

On the same principle, an exemption from local taxation given by a public Act will not readily be held to have been taken away by a subsequent local Act. In *Mayor, &c. of London v. Netherlands Steamboat Co.*, (1906) App. Cas. 262, it was held that sects. 169, 187 of a local Act, the City of London Sewers Act, 1848 (11 & 12 Vict. c. clxiii.), did not repeal an exemption from rates given by two public statutes of 1812 and 1832, authorising the erection of a new custom house and the sale of the site of the old custom house (*u*).

Repeal of  
private Act  
by private  
Act.

[“It is a rule of law,” Turner, L.J., is reported to have said in *Birkenhead Trustees v. Laird* (1854), 23 L. J. Ch. 457, “that one private Act of Parliament cannot repeal another, except by express enactment . . . that is to say, the rule of law as to the construction of such Acts is not to do anything which would be in effect a repeal of any clause, unless in the subsequent Act some words are inserted which would operate as an express repeal of the former (*v*). . . . That appears to be the rule as laid down by the learned Judge Jenkins in his work called ‘Eight Centuries of Reports,’ where, in the Fifth Century, Case 11, he lays it down that ‘a special statute does not derogate from a special statute without express words of abrogation.’”] It is doubtful whether this *dictum* would now be accepted. The rule is certainly not a rule of law, but at most a canon of construction; and it is submitted that one private Act is repealed by another by necessary implication if the two are completely inconsistent. And this view seems to have been accepted by North, J., in *Mayor, &c. of Sheffield v. Sheffield Electric Light Co.* (*x*).

It is said that  
a private Act  
may be re-  
lieved against,  
if obtained  
by fraud.

[5. It is said by Blackstone (*y*) that a private Act, “when obtained upon fraudulent suggestions, hath been relieved against.” And this proposition is adopted by Cruise (*z*). Cruise, however, points out (*a*) that formerly any Act of Parliament, private as well as public, “was considered as an assurance of so high a nature that, although it was obtained by fraud, yet it could not be relieved against by any of the Courts of law or equity, but only by the power that made it, that is, by Parliament.” In support of Blackstone’s proposition, Cruise gives an abstract of the case of *Mackenzie v. Stuart*, decided by the House of Lords on appeal from the Court of Session in 1754; and cites the case of *Biddulph v. Biddulph*, decided by the House

ful attempt was made to show that stock created under a special Act did not fall within the Stamp Act, 1891.

(*u*) See per Lord Halsbury, p. 268. In the case of two local Acts the rule seems to be different. See *Sion College case*, (1901) 1 K. B. 617, and the cases there cited, and *Jonas v. St. Dunstan’s Churchwardens*, K. B. D., 27 Oct. 1906.

(*v*) This *dictum* of Turner, L.J., is not contained in the report of the case in 4 De G. M. & G. 742.

(*x*) *Ante*, p. 469, and see Maxwell on Statutes (3rd ed.), 254.

(*y*) 2 Comm. 346.

(*z*) Digest, vol. v. tit. Private Act, s. 50, p. 28 (ed. 1824).

(*a*) *Loc. cit.* s. 49.



of Lords in 1790. In neither of these cases, however, is the doctrine discussed, or any reasons given for the decision.] The question has never been solemnly discussed in any modern case. In *Stead v. Carey* (1845), 1 C. B. 496, 516, Cresswell, J., said: "It is something new to impeach an Act of Parliament by a plea stating that it was obtained by fraud;" and in *Waterford Rail. Co. v. Logan* (1850), 14 Q. B. 672, the Court refused to allow a plea alleging that "the Act was obtained by the fraud of the plaintiffs" (b), and the proper course to adopt when a Bill or clause is smuggled through Parliament is to bring in a Bill to repeal the clause in question (c). And the decision of the Judicial Committee in *Labrador Co. v. Reg.*, (1893) App. Cas. 104 (d), seems finally to dispose of the notion that it is any ground for disregarding a statute to say that the Legislature was deceived in its grant.

6. [It is also said that in England (e) any agreement which may be made to disarm opposition to a Bill, and which is intended by both parties to the agreement to be kept secret, will be held invalid as being a fraud upon the Legislature, and contrary to the principles of public policy. In *Vauxhall Bridge Co. v. Earl Spencer* (1817), 2 Madd. 356, it appeared that, in order to induce the proprietors of Battersea Bridge not to oppose a private Act which the Vauxhall Bridge Company were applying to Parliament for, the plaintiffs paid into the hands of trustees a certain sum of money, which was to be handed over to the defendants, the proprietors of Battersea Bridge, as soon as the Act was passed. No opposition was made to the Bill by the defendants, and the Act was passed, but the plaintiffs then disputed the right of the defendants to have this sum of money handed over to them, on the ground that the agreement not to oppose the passing of the Act was invalid, as being a fraud upon the Legislature and contrary to public policy. And so it was held by the Court. "This agreement," said Plumer, V.-C., "was secretly made during the pendency of the Bill in Parliament, and that secrecy is the great ground of objection to it. . . . The object of the agreement was to prevent an opposition to the Bill in Parliament, and it was to be concealed from the Legislature. Such an underhand agreement was a fraud

Can secret and fraudulent agreement for obtaining a private Act be set aside?

(b) See also *dicta* of Willes, J., in *Lee v. Bude, &c. Rail. Co.* (1871), L. R. 6 C. P. 576, 580, cited *ante*, p. 70.

(c) The Torquay Harbour and District Act, 1886, s. 38, as to Sunday processions, was repealed in 1888 by a Pier and Harbours Confirmation Act (No. 2). A similar clause in the Eastbourne Improvement Act, 1885, was repealed in 1892 by 55 & 56 Vict. c. cxciii., a Bill promoted by the Salvation Army.

(d) *Ante*, p. 41.

(e) In America, "contracts made with a view to secure the passage of legislative enactments have been held to be void as against public policy. Thus a contract to procure the passage of an Act by the Legislature by using personal influence, to pay a sum for withdrawing opposition to the passage of a law touching the interests of a corporation, have all been held void." Sedgwick, *Statutory Law* (2nd ed.), 53. See May, *Parl. Pract.* (9th ed.) p. 756, n. 2.

upon the Legislature and contrary to principles of public policy. The contract therefore is invalid" (f). But it seems from the case of *Lord Howden v. Simpson* (1839), 10 A. & E. 817 (g), that the mere fact of an agreement of this kind being kept secret is not sufficient to invalidate it; it must also be proved that there was an intention to deceive the Legislature by making some false representation to it. In *Lord Howden v. Simpson* it appeared, said the Court, "that the plaintiff and the defendant had agreed together to represent to the Legislature the line of road described in the then pending Bill as the line which was to be adopted and acted upon, whilst, in truth, they intended at the time to apply for, and adopt and act on, another, if obtained. . . . The supposed fraud [therefore] consists in an intention to make a false representation to the Legislature, by stating the object of the adventurers to be to carry one line into effect and concealing the design of applying for another. . . . It is not enough that the existence of such an agreement was at the time of entering into it, and afterwards, in fact, kept secret from the Legislature and all the world besides by both parties. The quality of the agreement, whether fraudulent or not, must depend upon the intention of the parties to it at the time of making it, and if there did not then exist the intention of deceiving the Legislature by concealing from it, whilst the petitioners were asking for one set of powers, the purpose of asking afterwards for others, the agreement cannot be void." So also in *Shrewsbury Rail. Co. v. London and North Western Rail. Co.* (1849), 2 Macn. & G. 324, it appeared that a Bill had been brought in for the purpose of enabling one company to grant to another company a lease of certain lines of railway, and this Bill was opposed by a third company, but ultimately an agreement was come to by which, in consideration of the third company withdrawing their opposition, the other two companies engaged to conduct their traffic in a certain specified way, so as not to prejudice the interests of the third company. On a bill being filed to enforce this agreement, it was contended that the agreement was a fraud upon Parliament. "I cannot, however," said Lord Cottenham, "see how that can be the case. . . . It cannot be said that the parties could not come to a private arrangement between themselves. The opposition to a Bill must be supposed to be for the purpose of guarding the particular interest of the parties opposing. If those objects are attained by any private arrangement, it is no fraud on Parliament."

Creating new  
jurisdiction  
by private  
Act.

7. [Although the Legislature can undoubtedly in a private Act, by specific enactment and in terms, make any provision it pleases for a particular state of circumstances, it was held in *Green v. Mortimer* (1860), 3 L. T. N. S. 642, that Parliament

(f) Reversed by Lord Eldon on appeal (1821), Jac. 64, on other grounds.

(g) In H. L. (1842); 9 Cl. & F. 61; 8 Eng. Rep. 338.

cannot by a private Act in a specific and particular case confer upon a Court of justice a jurisdiction to do something which is beyond the general jurisdiction of that Court, and any provision in a private Act professing to do so would be inoperative.

The case arose on a private Act called Carew's Estate Act, 1857, whereby certain lands and stock were vested in trustees to pay the yearly income to C., and it was enacted that the Court of Chancery might, so far as the rules of law and equity and the jurisdiction of the Court would admit, make orders so as to ensure that the life estate of C. should be inalienable. By an agreement made with one Ford, C. covenanted to charge his life interest with the payment of a certain sum of money, but by an order of the Court made subsequently to the agreement, it was ordered that the whole of the income payable to C. for his life should be inalienable by him, and from time to time when it became payable should be applied solely for his exclusive personal enjoyment. Upon this a bill was filed by the plaintiff on Ford's behalf against the trustees, submitting that, notwithstanding the order, Ford was entitled to a charge in accordance with the agreement made by C. with Ford. To this bill the trustees demurred, and contended that C. took, not a life estate *simpliciter*, but an inalienable life estate, which it was plainly the object of the Legislature to confer upon him. But the Lord Chancellor (Lord Campbell), in giving judgment against the demurrer, expressed his great surprise that such an Act should appear upon the Statute-book; it must have been passed *per incuriam*. The Act contained something which was quite absurd, and in terms gave the Court power to do that which was quite impossible; for it was clear that the Court could have no power to do that which the Act professed to empower it to do. The order by which the declared intentions of the Act were to be carried out was *ultra vires* of the Court, for there could be no power to give such a qualification to C.'s interest. There must be the same power in C. to encumber his estate as if the Act had never passed.] But this decision stands by itself as a warning, and not as a precedent. A very large number of Acts, usually described as private but more correctly styled local, do create a new jurisdiction and new offences (*h*). And in *Cairns v. Linton* (1889), 16 Rettie (Justiciary), 84, the Court of Session felt constrained to hold that a local Act had given the Sheriff of Midlothian a large jurisdiction in the rest of Scotland as to execution of process, and in *Caledonian Rail. Co. v. Greenock and Wemyss Bay Rail. Co.* (1874), L. R. 2 H. L. (Sc.) 347, it was held that a clause in an agreement scheduled to and confirmed by a special Act ousted the jurisdiction of the ordinary

(*h*) *E.g.* the Eastbourne Improvement Act, 1885, *ante*, p. 473, n. Bills of this kind are submitted to a special committee charged to excise clauses inserted for this purpose which are unnecessary or inexpedient.

Waiver of  
rights given  
by private  
Act.

Courts and compelled the parties to have recourse to arbitration (*i*).

8. In *Great Eastern Rail. Co. v. Goldsmid* (1884), 9 App. Cas. 927, a question was raised as to an Act of 1 Ed. 3 which was treated as falling into the same category, or a similar category, with what are now called local and personal or private Acts (*k*), and it was held that the grant of a market therein contained was “a *jus introductum* for the particular benefit of the City of London,” and not a general law for the general benefit of all the subjects of the realm (*l*); and that it fell “within the general principle of law *unusquisque potest renuntiare juri pro se introducto*, a principle not only of ancient but also of modern application, applicable even where Acts of Parliament have been passed of a much more public character. In such cases, where the rights given have been only private rights, unless there has been also in the Act of Parliament a clause excluding a power of contract, it has been held that by contract or by voluntary renunciation such rights, as far as they are personal rights, may be parted with and renounced” (*m*).

(*i*) Cf. *G. W. R. v. Halesowen Rail. Co.* (1883), 52 L. J. Q. B. 473.

(*k*) p. 932, Lord Selborne.

(*l*) p. 936, Lord Selborne.

(*m*) pp. 936, 937, Lord Selborne; and see *ante*, p. 239.

## APPENDIX A.

### CERTAIN WORDS AND EXPRESSIONS USED IN STATUTES WHICH HAVE BEEN JUDICIALLY OR STATUTABLY EXPLAINED.

“ABOUT,” in sect. 7 (1) of the Workmen’s Compensation Act, 1897 (60 & 61 Vict. c. 37). See *Fenn v. Miller*, (1900) 1 Q. B. 788; *Powell v. Brown*, (1899) 1 Q. B. 157; *Owens v. Campbell*, (1904) 2 K. B. 60.

[ABSENCE, in sect. 23 of the Matrimonial Causes Act, 1857 (20 & 21 Vict. c. 85), with regard to a lawsuit, means non-appearance in the suit, and not absence without knowledge or notice of the suit. *Phillips v. Phillips* (1866), L. R. 1 P. & M. 169.]

ABSENTING HIMSELF, in sect. 4 (1), (d), of the Bankruptcy Act, 1883 (46 & 47 Vict. c. 52), does not necessarily involve actual physical absence from a particular place. *Ex parte Jackson*, (1895) 1 Q. B. 183; *Re Worsley*, (1901) 1 K. B. 309 (C. A.).

ABSOLUTE (ASSIGNMENT), in Judicature Act, 1873 (36 & 37 Vict. c. 66), s. 25 (6), means an assignment absolute in form, and intended to operate in substance, by passing the legal property in the *chose in action*, even if it contains: (1) a trust in respect of the amount recorded in respect of the *chose in action* (*Comfort v. Betts*, (1891) 1 Q. B. 737); or (2) a proviso for redemption and re-assignment. *Durham Brothers v. Robertson*, (1898) 1 Q. B. 795 (C. A.), where the cases are collected. But see *Mercantile Bank of London v. Evans*, (1899) 2 Q. B. 613.

ABUT, ABUTTAL.—See *Oxford, Ltd. v. London County Council*, (1898) 2 Ch. 491.

“ACCEPTANCE,” in sect. 4 of the Sale of Goods Act, 1893 (56 & 57 Vict. c. 71), which re-enacts sect. 17 of the Statute of Frauds. See *Abbot v. Wolsey*, (1895) 2 Q. B. 97; *Taylor v. Smith*, (1893) 2 Q. B. 65.

ACCIDENT, in the Workmen’s Compensation Act, 1897 (60 & 61 Vict. c. 37), s. 1. See *Hensley v. White*, (1900) 1 Q. B. 481 (C. A.); *Fenton v. Thorley*, (1903) App. Cas. 443; *Boardman v. Scott*, (1904) 1 K. B. 43 (C. A.); *Brintons v. Turvey*, (1905) A. C. 230; and see *Re Scarr and General Accident Insurance Corporation*, (1905) 1 K. B. 387, Bray, J.; and cases in Porter on Insurance (4th ed.), 484—509.

ACCOMMODATION WORKS, in Railway Acts. See *G. W. R. v. Talbot*, (1902) 2 Ch. 759 (C. A.).

ACCORDANCE WITH THE FORM (IN), in the Bills of Sale Act, 1882 (45 & 46 Vict. c. 43), does not mean *in the form, i.e.*, requires not verbal and literal following, but substantial following of the form. *Thomas v. Kelly* (1888), 13 App. Cas. 506, 519; *Re Heseltine*, (1891) 1 Ch. 464, 472.

ACCRUE, in Income Tax Acts. *Herbert v. McQuade*, (1902) 2 K. B. 631.

ACCRUED DUE, in sect. 42 of the Bankruptcy Act, 1883 (46 & 47 Vict. c. 52). See *Ex parte Mandleberg*, (1895) 1 Q. B. 844.

ACQUISITION OF GAIN, in the Companies Act, 1862 (25 & 26 Vict. c. 89), s. 4, as applied to a company or society, does not mean the acquisition of gain to the society itself, but gain to any member. *Shaw v. Benson* (1883), 11 Q. B. D. 563, following *Padstow Total Loss Association* (1881), 20 Ch. D. 137.

ACT OF PARLIAMENT, in sect. 2 (1) of the Settled Land Act, 1882 (45 & 46 Vict. c. 38), includes general Acts as well as private Acts dealing with specific property. *Vine v. Raleigh*, (1896) 1 Ch. 37.

[ACT TO BE PASSED IN THE PRESENT SESSION.—43 Geo. 3, c. 122, s. 2, enacted that certain duties were to be “assessed and collected under the regulations of any Act *to be passed* in the present session of Parliament for consolidating certain of the provisions, &c.” The Act was passed on August 11, 1803, but the Act “for consolidating certain of the provisions, &c.,” 43 Geo. 3, c. 99, had been passed on July 27, 1803. It was argued in *Nares v. Rowles* (1810), 14 East, 510, that the words “to be passed” could not refer to 43 Geo. 3, c. 99, as it had been passed prior to August 11. “The session,” said Lord Ellenborough, “is a thing of continuity, and therefore, when the Legislature speak of ‘any Act to be passed in that session,’ they mean any Act that shall be passed from the commencement to the conclusion of the session, embracing both the past and future portions of it. . . . In referring the words to the whole period of the session, we violate no rule of grammar; they may fairly be taken to mean any Act which at the expiration of that session shall have been passed for the purpose, and, with reference to the whole session from its commencement, it is ‘an Act to be passed in that session.’”]

ACTION, in 29 & 30 Vict. c. 19 (Parliamentary Oaths), s. 5, is used in its generic sense, as including proceedings by the Crown as well as by the subject. *Selborne, L. C., Bradlaugh v. Clarke* (1882), 8 App. Cas. at p. 361 (*diss.* Lord Blackburn, at p. 375).

,, See *Cause of action*, *infra*, p. 485.

ACTS OR DEFAULTS, in Public Health (London) Act, 1891. See *Nathan v. Rouse*, (1905) 1 K. B. 527.

ACTS OR PRACTISES, in sect. 59 of the Stamp Act, 1870, c. 97, s. 59 (see now 54 & 55 Vict. c. 39, s. 43), means "carries on business with a *quasi*-permanent habitat," and points to a series of acts, and not to an isolated transaction such as attending a taxation on a retainer for that specific purpose. *Re Horton* (1881), 8 Q. B. D. 434 (Field and Cave, JJ.).

ACTUAL USE OR OCCUPATION, in Workmen's Compensation Act, 1897 (60 & 61 Vict. c. 37), s. 7. *Merrill v. Wilson*, (1901) 1 K. B. 35.

ADDITION TO TRADE MARK.—See *Faulder's Trade Mark*, (1902) 1 Ch. 125 (C. A.).

ADDRESS, in the Bills of Sale Act, 1878, Amendment Act, 1882 (45 & 46 Vict. c. 43), ss. 8, 9, does not mean place of residence, but a place where the witness could be found by letter or call. *Re Heseltine*, (1891) 1 Ch. 464; (1892) App. Cas. 100; *Dolcini v. Dolcini*, (1895) 1 Q. B. 898.

ADJACENT, in a New Zealand Act (Municipal Corporations Act, 1900, s. 219), held not to connote a precise and uniform degree of proximity. Two boroughs 6 miles apart, with other local divisions intervening; held adjacent within the meaning of the statute. *Wellington (Mayor) v. Lower Hutt (Mayor)*, (1904) A. C. 773.

ADJOINING.—See *Wakefield L. B. v. Lee* (1876), 1 Ex. D. 336; *Coventry v. L. B. & S. C. R.* (1867), L. R. 5 Eq. 104; *L. & S. W. R. v. Blackmore* (1870), L. R. 4 H. L. 610; *Lightbound v. Higher Bebington L. B.* (1885), 16 Q. B. D. 577; *Bateman and Parkes' Contract*, (1899) 1 Ch. 599; *cf. Pitches v. Kenny* (1903), 22 N. Z. L. R. 518, where two cattle runs, separated by reservations a chain wide and a river, were held not to be adjoining.

ADJOINING OWNER, in the Metropolitan Building Act, 1855, included a tenant for years of part of a house. *Fillingham v. Wood*, (1891) 1 Ch. 51. See now 57 & 58 Vict. c. cexiii. s. 5, sub-ss. 29, 30, and s. 90.

[ADJOURN, in 15 & 16 Vict. c. 57, s. 4 (election petitions), is used in its popular sense, *i.e.*, "deferring or postponing an inquiry to a future day." *Fitzgerald's case* (1869), L. R. 5 Q. B. 18.]

ADMIRALTY.—The Lord High Admiral of the United Kingdom for the time being, or the Commissioners for the time being for executing that office. Int. Act, 1889, c. 63, s. 12 (4), *post*, Appendix C.

ADMITTED SET-OFF, in the County Courts Act, 1888 (51 & 52 Vict. c. 43), s. 27, means set-off admitted by *both* parties. *Hubbard v. Goodley* (1890), 25 Q. B. D. 156.

ADOPTIVE ACTS.—See 56 & 57 Vict. c. 73, s. 7 (1), and 62 & 63 Vict. c. 14, s. 34.

ADVANTAGE, in the Official Secrets Act, 1889 (52 & 53 Vict. c. 52), s. 7, includes (1) "any office or dignity, and any forbearance to demand any money or money's worth, or valuable thing;" (2) "any aid, vote, consent, or influence, or pretended aid, vote, con-

sent, or influence;” and (3) “any promise or procurement of an agreement or endeavour to procure, or the holding out of any expectation of any gift, loan, fee, reward, or advantage as above defined.”

**ADVISEDLY**, in 13 Eliz. c. 12, s. 2, means “deliberately,” i.e., “after consideration” or “not inadvertently,” but not merely “intentionally.” *Heath v. Burder* (1862), 15 Moore, P. C. 147.

**AFFECTED INJURIOUSLY**.—See *Injuriously affected*, *post*, p. 512.

**AFFIDAVIT**.—See 52 & 53 Vict. c. 63, s. 3, *post*, Appendix C.

**AFTERNOON**.—In 9 Geo. 4, c. 61, sch. C, the expression “afternoon divine service” means “the earlier part of the time from noon to midnight as distinguished from the evening.” *R. v. Knapp* (1853), 2 E. & B. 451, Erle, J.

**AGGRIEVED**.—A term of very ancient origin, appearing on the Statute Roll of 1363: “*et outre le dit Roy voet que si n'ol se sent grever, mette avant sa petition en ce Parlement et il en avera convenable respons*” (*vide* 1 Cliff. 272). For purposes of ascertaining rights of appeal, any person who is in any sense a party to a legal proceeding is “aggrieved” by a wrong decision with regard to the proceeding. *Re Reed & Co.* (1887), 19 Q. B. D. 174. And see *Powell v. Birmingham Brewery Co.*, (1894) App. Cas. 8; *Johnson v. Edge*, (1892) 2 Ch. 1 (C. A.); *Re Colchester Grammar School*, (1898) App. Cas. 477, 483; *Re Apollinaris Co.'s Trade Mark*, (1891) 2 Ch. 186 (C. A.); *Re Trade Mark of La Société Anonyme des Verrieres de l'Etoile*, (1894) 2 Ch. 26 (C. A.); *R. v. Lewisham Guardians*, (1897) 1 Q. B. 498; *Stokes v. Mitcheson*, (1902) 1 K. B. 857.

**AGRICULTURAL LAND**, in the Agricultural Rates Act, 1896 (59 & 60 Vict. c. 16), does not include glass-houses in a market-garden. *Smith v. Richmond*, (1898) App. Cas. 448.

**AGRICULTURE**, in the Board of Agriculture Act, 1889 (52 & 53 Vict. c. 30), s. 12, includes horticulture.

**ALIENATION**, in the Succession Duty Act, 1853 (16 & 17 Vict. c. 51). See *Lord Wolverton v. Att.-Gen.*, (1898) App. Cas. 535.

**ALL CONTRACTS**, in 37 & 38 Vict. c. 62, s. 1, does not include marriage settlements made by infants, but only contracts falling within the three classes specified in the Act. *Duncan v. Dixon* (1890), 44 Ch. D. 211 (Kekewich, J.); *contra*, *Ex parte Jones* (1881), 18 Ch. D. 122, per Jessel, M.R.

**ALMSHOUSE**, in sect. 61 of the Income Tax Act, 1842 (5 & 6 Vict. c. 35). *Trustees of Mary Clarke Home v. Anderson*, (1904) 2 K. B. 645 (Channell, J.).

**ALREADY**, in sect. 9 of the Burials Act, 1855, held to mean “at the commencement of the Act.” *Godden v. Hythe Burial Board*, (1906) 2 Ch. 270.

**ALTERATION** of “flood works,” within sect. 23 of the Metropolitan Management (Prevention of Floods) Act, 1879 (42 & 43 Vict. c. cxviii.). *L. C. C. v. L. B. & S. C. R.*, (1906) 2 K. B. 72.



AMOUNT REALISED, in the Bankruptcy Act, 1890 (53 & 54 Vict. c. 71), s. 15 (1). See *Re Christie*, (1900) 1 Q. B. 5.

AMUSEMENT.—See *Entertainment or Amusement*.

AND [as used in a turnpike Act of 42 Geo. 3, held not to be taken conjunctively, but disjunctively or distributively, that is, as equivalent to “or.” *Waterhouse v. Keen* (1825), 4 B. & C. 200].

„ read distributively in a by-law. *Stainland Industrial, &c. Society v. Stainland U. D. C.*, (1906) 1 K. B. 233. See also *Townsend v. Read* (1861), 10 C. B. N. S. 317; but as to “and” in a will, see *Re Sutton* (1885), 28 Ch. D. 464.

ANNUAL PAY, in the Police Act, 1890 (53 & 54 Vict. c. 45). See *Upperton v. Ridley*, (1903) App. Cas. 281.

ANNUAL VALUE, in the Grand Junction Waterworks Acts, 1826 (7 Geo. 4, c. exl.), s. 27, and 1852 (15 & 16 Vict. c. clvii.), s. 46, means “net annual value” as defined in the Parochial Assessments Act, 1836 (6 & 7 Will. 4, c. 96), s. 1. *Dobbs v. Grand Junction Waterworks Co.* (1883), 9 App. Cas. 49; cf. Public Health (London) Act, 1891 (54 & 55 Vict. c. 76), s. 141, and Valuation (Metropolis) Act, 1869 (32 & 33 Vict. c. 67), s. 2.

„ in the Reform Act, 1832 (2 & 3 Will. 4, c. 45), s. 27, means the fair annual rent without deduction for landlord’s repairs. *Colwill v. Wood* (1846), 2 C. B. 210.

„ in the House Tax Acts and Income Tax Acts, means the gross annual value, and not the net value for poor rate. *Walker v. Brisley*, (1900) 2 Q. B. 735. See *Re Surrey County Cricket Club*, (1902) 2 K. B. 400; and 32 & 33 Vict. c. 67, ss. 4, 45.

ANNUITY, in the Income Tax Act, 1842 (5 & 6 Vict. c. 35), and Succession Duty Act, 1853 (16 & 17 Vict. c. 51). *Secretary of State for India in Council v. Scoble*, (1903) A. C. 299.

ANY SHIP, in sects. 260, 261, of the Merchant Shipping Act, 1894 (57 & 58 Vict. c. 60), applies to foreign as well as British ships. *R. v. Stewart*, (1899) 1 Q. B. 964.

APPOINTED DAY. See *Jones v. Hughes*, (1905) 1 Ch. 180 (C. A.).

APPROACH.—See *Immediate approach*.

APPROVED PLAN (in 10 & 11 Vict. c. cxxix. s. 35), held to mean a plan lawfully approved by a local authority, and not merely one which had been in fact approved. *Yabbicom v. King*, (1899) 1 Q. B. 444; cf. *McIntosh v. Pontypridd Improvements Co.* (1892), 61 L. J. Q. B. 164; *Baxter v. Bedford Corporation* (1885), 1 T. L. R. 424.

“APPROVED SERVICE,” in sect. 1 of the Police Act, 1890 (53 & 54 Vict. c. 45). See *Garbutt v. Durham Joint Committee*, (1906) A. C. 291.

ARMAMENT, in the Naval Defence Act, 1889 (52 & 53 Vict. c. 8), s. 8, means “reserves as well as outfit.”

ARTIFICER, in the Lord's Day Act (29 Chas. 2, c. 7), s. 1. See *Palmer v. Snow*, (1900) 1 Q. B. 725.

ASSESSOR (SC.).—The assessor appointed and acting under the Scotch Valuation Acts. See 49 & 50 Vict. c. 15, s. 3.

ASSIGNEE, in sect. 37 of the Solicitors Act, 1843 (6 & 7 Vict. c. 73), does not mean assignee in bankruptcy, but assignee within the meaning of sect. 25 of the Judicature Act, 1873 (36 & 37 Vict. c. 66). *Ingle v. McCutchan* (1884), 12 Q. B. D. 518.

ASSIZES, in England, Wales, and Ireland, means the Courts of assize usually held in every year, including the sessions of the Central Criminal Court, but does not include a Court of assize held under a special commission, or held in Ireland under 40 & 41 Vict. c. 57, s. 63. Int. Act, 1889 (c. 63), s. 13 (5), *post*, Appendix C.

ASSURANCE, in 17 & 18 Vict. c. 36, s. 7 (bills of sale), held not to include a receipt containing an inventory, and given by a sheriff's officer for the price of goods sold under an execution. *Woodgate v. Godfrey* (1879), 5 Ex. D. 24.

„ in 47 & 48 Vict. c. 54, s. 3 (Yorkshire Registry), and in conveyances. See *Rodger v. Harrison*, (1893) 1 Q. B. 161.

AT THE TRIAL, in 38 & 39 Vict. c. 50, s. 6 (County Courts: see now 51 & 52 Vict. c. 43, s. 120), means during or immediately at the end of the trial, and *not* after a lapse of an hour and a half after judgment given. *Pierpoint v. Cartwright* (1880), 5 C. P. D. 139; *Smith v. Baker*, (1891) App. Cas. 325; and see *Upon the trial*.

ATTACHMENT FOR DEBT, in the Sheriffs Act, 1887 (50 & 51 Vict. c. 55), s. 14 (1), does not include arrest on an order of commitment under the Debtors Act, 1869 (32 & 33 Vict. c. 62), s. 5. *Mitchell v. Simpson* (1890), 25 Q. B. D. 183.

ATTEST, in the Wills Act, 1837 (7 Will. 4 & 1 Vict. c. 26), s. 9, means “be present and see what passes, and, when required, bear witness to the fact.” Per Dr. Lushington in *Bryan v. White* (1850), 2 Robertson, 317; followed in *Sharpe v. Birch* (1881), 8 Q. B. D. 111, 113, as to the meaning of the word as used in 41 & 42 Vict. c. 31, s. 6; see also *Ford v. Kettle* (1882), 9 Q. B. D. 139, 143.

ATTORNEY-GENERAL, in Imperial Acts, or Acts relating to the British Islands or the whole of the United Kingdom is used as a compendious expression for the law officers of the Crown in each part of the United Kingdom or Empire affected by the enactment—*e.g.* 1889, c. 52, s. 7 (2), Official Secrets; c. 69, s. 4 (2), Public Bodies Corrupt Practices.

AUDIT, in the Public Health Act, 1875 (38 & 39 Vict. c. 55), s. 246. See *Thomas v. Devonport Corporation*, (1900) 1 Q. B. 16.

AUTHOR (1) OF A PHOTOGRAPH (within 25 & 26 Vict. c. 68, ss. 1, 4), means the person who took the negative. *Nottage v. Jackson* (1883), 11 Q. B. D. 630. And see *Kenrick v. Lawrence* (1890); 25 Q. B. D. 99; *Melville v. Mirror of Life Co.*, (1895) 2 Ch. 531.

AUTHOR (2) of a report of a public speech in Parliament, see *Walter v. Lane*, (1900) App. Cas. 539.

AVERAGE.—See *Stuart v. Nixon*, (1901) A. C. 79.

BANK (THE), in the National Debt Redemption Act, 1889 (c. 4), s. 8, means the Governor and Company of the Bank of England, or the Governor and Company of the Bank of Ireland, as the case may require.

„ OF ENGLAND. See Interpretation Act, 1889, s. 12 (18), *post*, Appendix C.

„ OF IRELAND. See Int. Act, 1889 (c. 63), s. 12 (19), *post*, Appx. C.

BANKER, in the Bank Charter Act, 1844 (7 & 8 Vict. c. 32), means a person carrying on the business of banking, whether by the issue of bank-notes or otherwise. And see *ante*, pp. 159, 188.

BANKS.—The earlier Acts relating to banks apply to banks of issue as distinguished from banks of deposit. *Att.-Gen. v. Birkbeck* (1884), 12 Q. B. D. 605, 616. *Vide ante*, pp. 159, 188.

[BARE TRUSTEE, in 38 & 39 Vict. c. 87, s. 48 (Land Transfer), means a trustee “without any beneficial interest;” but *quare* whether the fact that he has active duties to perform makes any difference. *Morgan v. Swansea* (1878), 9 Ch. D. 582.]

“BEDDING,” in the County Courts Act, 1888 (51 & 52 Vict. c. 43), s. 147, includes “bedstead.” *Davis v. Harris*, (1900) 1 Q. B. 729.

BEERHOUSE means “a place where beer is sold to be consumed on the premises, and BEERSHOP is a place where beer is sold to be consumed off the premises.” Per Fry, J., in *Holt v. Collyer* (1880), 16 Ch. D. 718, 721; *sed quare et vide cas. ibi cit.* *Vide Nicoll v. Fenning* (1881), 19 Ch. D. 258, 267.

“BETTERMENT.”—See *Re London County Council and City of London Brewery*, (1898) 1 Q. B. 387.

BEYOND THE SEAS [in 21 Jas. 1, c. 16, s. 7, has the same meaning in law as “out of the realm” or “out of the land.” *Ruckmaboye v. Lulloobhoy* (1851), 8 Moore, P. C. 4; 14 Eng. Rep. 2, 9], *cf.* *Musurus v. Gadban*, (1894) 2 Q. B. 352.

BOARD OF GUARDIANS.—See Int. Act, 1889, s. 16 (1), (3), *post*, Appx. C.

BOARD OF TRADE.—See Int. Act, 1889 (c. 63), s. 12 (8), *post*, Appx. C.

BONÂ FIDE TRAVELLER, within sect. 10 of the Licensing Act, 1874 (37 & 38 Vict. c. 49). See *Cowap v. Atherton*, (1893) 1 Q. B. 49; *Penn v. Alexander*, (1893) 1 Q. B. 522; *Williams v. Macdonald*, (1899) 2 Q. B. 308.

BOND, COVENANT, OR INSTRUMENT, in Schedule I. of the Stamp Act, 1891 (54 & 55 Vict. c. 39), includes agreements not under seal. *National Telephone Company v. Inland Revenue Commissioners*, (1899) 1 Q. B. 250; (1900) App. Cas. 1.

BOOK, in Copyright Act, 1842 (5 & 6 Vict. c. 45), s. 24, includes periodical. *Henderson v. Maxwell* (1877), 4 Ch. D. 163.

„ PUBLISHED IN NUMBERS, in Copyright Act, 1886 (49 & 50 Vict. c. 33), s. 11, “includes any review, magazine, periodical work, works published in a series of books or parts, transactions of a society or body, and other books of which different volumes or parts are published at different times.”

BOROUGH.—*Vide ante*, p. 151.

BOUNDARY.—See *Place having a known boundary*.

BRAND, in Patents Act, 1883 (46 & 47 Vict. c. 57), s. 64, means “a device applied to an article by burning, and not a device woven or incorporated into the substance of the article.” *Pirie v. Goodall*, (1892) 1 Ch. 35.

BRIDGE, in sect. 46 of the Railways Clauses Consolidation Act, 1845 (8 & 9 Vict. c. 20), includes the highway passing over it. *Lancashire and Yorkshire Rail. Co. v. Bury Corporation* (1889), 14 App. Cas. 417.

„ in 22 Hen. 8, c. 5, and 5 & 6 Will. 4, c. 50 (Highways), s. 21, only applies to bridges in existing highways, unless there be distinct evidence of acquiescence by the inhabitants in the building and dedication of the bridge. *R. v. Southampton* (1886), 17 Q. B. D. 424.

BRITISH INDIA.—See Int. Act, 1889 (c. 63), s. 18 (4), *post*, Appx. C.; *cf.* 1890 (c. 4), s. 9 (1).

„ ISLANDS.—See Int. Act, 1889 (c. 63), s. 18 (1), *post*, Appx. C.

„ POSSESSION.—See Int. Act, 1889 (c. 63), s. 18 (2), *post*, Appx. C.

BUILDING.—See *St. Botolph, Aldersgate Without, Vicar of v. Parishioners of*, (1900) P. 69; *Hedley v. Webb*, (1901) 2 Ch. 126; *Humphery v. Young*, (1903) 1 K. B. 44; *Boyce v. Paddington Corporation*, (1906) App. Cas. 1.

BUILDING LINE, in Public Health (Building in Streets) Act, 1888 (51 & 52 Vict. c. 52).—See *Ravensthorpe L. B. v. Hinchcliffe* (1890), 24 Q. B. D. 168; *Att.-Gen. v. Edwards*, (1891) 1 Ch. 194.

„ in London Building Acts.—See *Barlow v. Kensington Vestry* (1886), 11 App. Cas. 257; *London County Council v. Cross* (1892), 61 L. J. M. C. 160; *Allen v. London County Council*, (1895) 2 Q. B. 587.

BUSINESS has no definite technical meaning, but is to be read with reference to the object and intent of the Act in which it occurs. *Ex parte Breull* (1881), 16 Ch. D. 484 (James, L.J.).

„ in the Companies Act, 1862 (25 & 26 Vict. c. 89), s. 199, ordinarily means trading (for gain) under the Act (*Re Bristol Athenæum* (1889), 43 Ch. D. 236), and is not wide enough to include the case of a literary or scientific institution not carried on for gain.

BUSINESS (CARRYING ON)—*i.e.*, as a principal, not as a clerk or workman. *Graham v. Lewis* (1888), 22 Q. B. D. 1.

„ (TRADE OR), in the Customs and Inland Revenue Act, 1878 (41 & 42 Vict. c. 15), s. 13 (2). See *Muat v. Shaw Stewart* (1890), 17 Rettie (Sc.), 377.

CALCULATED TO DECEIVE, in Patents Act, 1883 (46 & 47 Vict. c. 57), s. 5 (5), means which will induce the public to purchase the article in question in the belief that it was other than it really is. *Eno v. Dunn* (1890), 15 App. Cas. 252.

CALENDAR MONTH is computed in the same way in civil and criminal proceedings. *Radcliffe v. Bartholomew*, (1892) 1 Q. B. 161; *vide ante*, p. 150, n.

CANDIDATE, in 51 Geo. 3, c. 126, means a man who offers himself to the suffrages of the electors. See Parl. Elections Act, 1868, s. 3.

CAPITAL, circulating or fixed. *Bond v. Barrow Hamatite Steel Co.*, (1902) 1 Ch. 353.

„ reduction of. See *Re Anglo-French Exploration Co.*, (1902) 2 Ch. 845.

„ “SUM EMPLOYED AS,” in the Income Tax Act, 1842 (5 & 6 Vict. c. 35), s. 100. See *Royal Ins. Co. v. Watson*, (1896) App. Cas. 1.

CARRIAGE, in a local Act of 1767 imposing bridge tolls, held to include bicycles and tricycles. *Cannan v. Earl of Abingdon*, (1900) 2 Q. B. 66; but see *ante*, p. 158, n.

[CARRIED INTO, in 24 & 25 Vict. c. 10, s. 6 (Admiralty), is used in a wider sense than “imported.” *Daputo v. Wyllie* (1874), L. R. 5 P. C. 482.]

CARRYING ON BUSINESS, [in 9 & 10 Vict. c. 95, s. 60, of a railway company, applies only to the station where the general superintendence of the whole company is centred. *Brown v. L. & N. W. Rail. Co.* (1863), 32 L. J. Q. B. 318;] *Palmer v. Caledonian Rail. Co.*, (1892) 1 Q. B. 607.

CASH, in 30 & 31 Vict. c. 131 (Companies), s. 25. See *In re Johannesburg Co.*, (1891) 1 Ch. 119.

[CATTLE, in 28 & 29 Vict. c. 60 (Dogs), includes pigs (*Child v. Hearn* (1874), L. R. 9 Ex. 176) and horses. *Wright v. Pearson* (1869), L. R. 4 Q. B. 582.]

CAUSE OF ACTION means everything which the plaintiff would have to prove if traversed in order to support his claim to the judgment of the Court. *Cooke v. Gill* (1872), L. R. 8 C. P. 107.

„ in Acts dealing with local Courts having a jurisdiction within a limited district, *e.g.*, in the Salford Hundred Court Act, 1868 (31 & 32 Vict. c. cxxx. ss. 6, 7), means the whole course of

action, and not merely the act or default which gives the plaintiff his cause of complaint. *Payne v. Hogg*, (1900) 2 Q. B. 43 (C. A.); and see *Felton v. Bower*, (1900) 1 Q. B. 598.

CAUSE OF ACTION includes an assignment of a cause of action. *Read v. Brown* (1888), 22 Q. B. D. 128.

„ in 53 Geo. 3, c. 127 (Ecclesiastical Courts), s. 1, is “not a technical word signifying one kind or another; it is *causa jurisdictionis*, any suit, action, matter or other similar proceeding competently brought before and litigated in a particular court.” Per Lord Selborne in *Green v. Lord Penzance* (1881), 6 App. Cas. 671.

CAVEAT, in 15 & 16 Vict. c. 83 (Patents), s. 20, meant “anything in the nature of an opposition at any stage, and is not confined to the opposition at the Great Seal, which was the meaning of ‘*caveat*’ under the old practice.” *Johnson’s Patent* (1880), 13 Ch. D. 398, note (1), Lord Cairns, L.C.

CHANCELLOR, THE LORD.—See Int. Act, 1889, s. 12 (1), *post*, Appx. C. Cf. National Debt Redemption Act, 1889 (c. 4), s. 18.

CHARGE OR CONTROL, in the Employers’ Liability Act, 1880 (43 & 44 Vict. c. 42), s. 1 (5), is construed as being two expressions, both meaning the same thing, but not including the case of a person who merely had the duty to clean and oil the machinery of the locking apparatus and points on a railway. *Gibbs v. G. W. R.* (1883), 11 Q. B. D. 22.

CHARGE OR CONTROL OF A CHILD.—See Prevention of Cruelty to Children Act, 1904 (4 Edw. 7, c. 15), s. 23 (2).

CHARGED UPON LAND, in the Limitation Act, 1833 (3 & 4 Will. 4, c. 27), s. 1, applies to payments in the nature of tithes imposed by 37 Hen. 8, c. 12, on houses in the City of London. *Payne v. Esdaile* (1888), 13 App. Cas. 613.

CHARITABLE PURPOSES, [technically, and in the eye of a Court of justice, “has a meaning so extensive as to include everything which is expressly described as a ‘charitable use’ in 43 Eliz. c. 4, s. 1, or is within what has been called the equity of the statute, but there is perhaps not one person in a thousand who knows what is the technical and legal meaning of the word ‘charity.’” *Dolan v. Macdermott* (1868), 3 Ch. App. 678, Lord Cairns.]

„ in the Income Tax Act, 1842 (5 & 6 Vict. c. 35), Sch. A., s. 61, has the legal technical meaning given it by English law. *Commissioners of Income Tax v. Pemsel*, (1891) App. Cas. 532; and see *Cunnack v. Edwards*, (1896) 2 Ch. 679 (C. A.).

CHARITABLE TRUST.—See *Att.-Gen. v. Webster* (1875), L. R. 20 Eq. 483; *Fell v. Official Trustee of Charity Lands*, (1898) 2 Ch. 44 (C. A.); *Hunter v. Att.-Gen.*, (1899) App. Cas. 323; *Blair v. Duncan*, (1902) App. Cas. 37; *In re Pardoe*, (1906) 2 Ch. 184.

CHARITABLE USE.—*Re Church Patronage Trust*, (1904) 2 Ch. 643 (C. A.).

CHARITY, [in 16 & 17 Vict. c. 137, s. 66 (Charitable Trusts), applies to every institution in England and Wales endowed for charitable purposes, "even though the constitution of the charity or the corpus of the property should be abroad." *Re Duncan* (1867), 2 Ch. App. 356:] and see *Cunnack v. Edwards*, (1896) 2 Ch. 679.

" COMMISSIONERS.—The Charity Commissioners for England [and Wales] for the time being. Int. Act, 1889 (c. 63), s. 12 (14), *post*, Appendix C.

CHIEF SECRETARY, when used with reference to Ireland, means the Chief Secretary to the Lord Lieutenant for the time being. Int. Act, 1889 (c. 63), s. 12 (10), *post*, Appendix C.

CHILD, [in the Poor Relief Act, 1601 (43 Eliz. c. 2), s. 7, does not include grandchild. *Maund v. Mason* (1874), L. R. 9 Q. B. 254.]

„ in Statute of Distributions.—*Vide ante*, p. 160.

„ when used in a statute, as to real estate means children lawful at birth by the law of England; as to personalty means children lawful according to the law of the domicile of the parents at the date of their birth. *Re Goodman's Trusts* (1881), 17 Ch. D. 266; but see Dicey, Conflict of Laws, 695; *Re Price*, (1900) 1 Ch. 442.

CHIMNEY, in sect. 24 of the Public Health (London) Act, 1891 (54 & 55 Vict. c. 76), includes the funnel of a steamboat. *Tough v. Hopkins*, (1904) 1 K. B. 804.

CLAIM, in the Parliamentary Registration Acts, includes a statutory declaration in support of a claim to vote. *Ainsley v. Nicholson* (1890), 24 Q. B. D. 144.

"CLAIMING RIGHT THERETO," in sect. 2 of the Prescription Act, 1832 (2 & 3 Will. 4, c. 71). *Gardner v. Hodgson's Kingston Breweries Co.*, (1900) 1 Ch. 592.

[CLAUSE OF A WILL, in 29 Chas. 2, c. 3, s. 6, means "some collocation of words in the will which, when removed out of the will, will leave the rest of the will intelligible": per Lord Cairns in *Swinton v. Bailey* (1878), 4 App. Cas. 70, 77; and per Mellish, L.J. (Sc.), 1 Ex. D. 121, "the word 'clause' is not used in any strict or technical sense, but merely means the same thing and has the same effect as 'part.'"]

CLERK OR SERVANT, in the Preferential Payments in Bankruptcy Act, 1888 (51 & 52 Vict. c. 62), as extended by 60 & 61 Vict. c. 19, s. 3, does not include the managing director of a company. *Re Newspaper Proprietary Syndicate, Limited*, (1900) 2 Ch. 349. Cf. Archbold, Cr. Pl. (23rd ed.), 558.

COAL, in the Metropolitan Streets Act, 1867 (30 & 31 Vict. c. 134), s. 15, does not include coke. *Fletcher v. Fields*, (1891) 1 Q. B. 790.

- COLLISION**, in sect. 3 of the County Courts Admiralty Jurisdiction Act, 1868 (31 & 32 Vict. c. 71), applies only as between vessels and not as between a vessel and a pier. *The Normandy*, (1904) P. 187.
- COLLUSION**, in the Matrimonial Causes Act, 1860 (23 & 24 Vict. c. 144), s. 7.—See *Hunt v. Hunt* (1878), 47 L. J. P. D. & A. 22; *Alexandre v. Alexandre* (1870), L. R. 2 P. & D. 164; *Butler v. Butler* (1890), 15 P. D. 67 (C. A.); *Same v. Same*, (1893) P. 185; (1894) P. 25; *Rogers v. Rogers*, (1894) P. 161; *Churchward v. Churchward*, (1895) P. 7.
- COLONIAL LEGISLATURE**.—The authority other than the Imperial Parliament or the King in Council competent to make laws for a British possession (including India). Int. Act, 1889 (c. 63), s. 18 (7), *post*, Appendix C.
- COLONY**.—Any part of the King's dominions except the British Islands and British India. Int. Act, 1889 (c. 63), s. 18 (5), *post*, Appx. C. Where parts of the King's dominions are under both a local and a central Legislature (*e.g.* Canada and Australia), all parts under the central Legislature are one colony for the purposes of this definition.
- COMMENCEMENT**.—*Vide ante*, p. 150.
- COMMERCIAL MATTERS**, in Art. 1233 (7) of the Quebec Civil Code held to include an action by stockbrokers on a balance of account rendered to their principal in respect of purchases and sales on his private speculative account. *Forget v. Baxter*, (1900) App. Cas. 467.
- COMMISSIONERS OF WOODS or OF WOODS AND FORESTS**.—The Commissioners for the time being of His Majesty's Woods and Forests and Land Revenues. Int. Act, 1889 (c. 63), s. 12 (12), *post*, Appendix C.
- „ **OF WORKS**.—The Commissioners for the time being of His Majesty's Works and Public Buildings. Int. Act, 1889 (c. 63), s. 12 (13), *post*, Appendix C.
- COMMITTED FOR TRIAL**, refers in England and Wales to any person committed to prison or admitted to bail by a Court, judge, justice, or coroner, with a view to his being tried before a judge and jury. Int. Act, 1889 (c. 63), s. 27, *post*, Appendix C.
- COMMITTED TO PRISON**, as used in 40 & 41 Vict. c. 21, s. 57, means "ordered to be kept in prison." *Mullins v. Treasurer of Surrey* (1881), 7 App. Cas. 1, 9.
- COMMON LODGING-HOUSE**, in the Common Lodging House Acts, 1851 and 1853 (14 & 15 Vict. c. 28, 16 & 17 Vict. c. 41), as explained by 23 & 24 Vict. c. 26, means a house open to all comers of whatever class (*Langdon v. Broadbent* (1878), 37 L. T. 436) who are received for payment, but does not include charitable institutions. *Parker v. Talbot*, (1905) 2 Ch. 643 (C. A.).



COMMUNICATE and COMMUNICATIONS, in Official Secrets Act, 1889 (52 & 53 Vict. c. 52), s. 8, "include any communication, whether in whole or in part, and whether the document, sketch, plan, model, or information itself, or the substance or effect thereof only be communicated."

COMPANY.—This word, apart from special definition in a particular statute, has no strictly technical meaning. It involves the ideas: (1) an association of persons too numerous to be described as a firm; (2) power of a member to transfer his interest without the consent of the other members. *Re Stanley*, (1906) 1 Ch. 131, 134, Buckley, J.

„ in the Railway Companies Act, 1867 (30 & 31 Vict. c. 127), ss. 3, 4, includes a dock company which has a short line of railway attached, although the railway is ancillary to the dock. *G. N. R. v. Tahourdin* (1883), 13 Q. B. D. 320. And see *Public Company*.

„ INCORPORATED BY ACT OF PARLIAMENT.—An insurance company incorporated by charter, in virtue of powers given by an Act of Parliament, is a company incorporated by Act of Parliament within the meaning of an investment clause. *Elve v. Boyton*, (1891) 1 Ch. 501.

„ PUBLIC, in sect. 5 of the Apportionment Act, 1870 (33 & 34 Vict. c. 35), held to include an unincorporated life assurance society established under a deed of settlement, and possessing power, &c. under a private Act. *Re Griffith* (1879), 12 Ch. D. 655. See *Re Castlehaw*, (1903) 1 Ch. 352.

„ [WHETHER INCORPORATED OR NOT, in the Judgments Act, 1838 (1 & 2 Vict. c. 110), s. 14, is an expression not known to the law as a legal term with a definite legal meaning. *McIntyre v. Connell* (1851), 20 L. J. Ch. 284.]

[COMPETENT COURT, in Debtors Act, 1869 (32 & 33 Vict. c. 62), s. 5, "must be understood to mean a Court acting within the local limits of its existing jurisdiction." *Washer v. Elliott* (1876), 1 C. P. D. 174.]

CONCEALED FRAUD, in Statutes of Limitations. See *Lawrance v. Lord Norreys* (1890), 15 App. Cas. 210.

CONCLUSIVE EVIDENCE, in sect. 51 of the Companies Act, 1862 (25 & 26 Vict. c. 89). *Re Hadleigh Castle Gold Mines, Ltd.*, (1900) 2 Ch. 419 (C. A.)

CONDUCT AND AFFAIRS OF BANKRUPT, in sect. 28 (2) of the Bankruptcy Act, 1883, means conduct arising out of or connected with the bankruptcy, but is not confined to the matters specified in sect. 28 (3). *Re Jones* (1890), 24 Q. B. D. 589.

CONFLICT, in sect. 56 of the Settled Land Act, 1882 (45 & 46 Vict. c. 38), explained. *Earl of Lonsdale v. Lowther*, (1900) 2 Ch. 687.

CONSUL or VICE-CONSUL.—For the purpose of the application of the Extradition Acts, 1870 and 1873, to British possessions, includes any person recognised by the Governor of a British possession as a consular officer of a foreign State (1873, c. 60, s. 7). This enactment was passed to cover the Canadian decision in *Lamirande's case* (1866), 10 Lower Can. Jur. 289.

CONSULAR AGENT, in the 1st schedule to the Fisheries Act, 1868 (31 & 32 Vict. c. 45), is equivalent to “consular officer” as defined in that Act, s. 5. The definition of 1868 is slightly affected by that in the Int. Act, 1889 (52 & 53 Vict. c. 63), s. 12 (20), *post*, Appendix C.

„ OFFICER, in all Acts, includes consul-general, consul, vice-consul, consular agent, or any person for the time being authorised to discharge the duties of consul-general, consul, or vice-consul. Int. Act, 1889, c. 63, s. 12 (20), *post*, Appendix C.; *cf.* 52 & 53 Vict. c. 10, s. 5 (Commissioners of Oaths); 55 & 56 Vict. c. 23, s. 24 (Foreign Marriage). This definition is based on that contained in the Sea Fisheries Act, 1868 (31 & 32 Vict. c. 45), with the substitution of “authorised to discharge” for “discharging.” In the earlier Act, also, “consular agent” in the convention scheduled to the Act is defined as equivalent to consular officer.

„ in the Merchant Shipping Act, 1894, c. 60, s. 742, “when used in relation to a foreign country, means the officer recognised by her Majesty as a consular officer of that foreign country.” Consular authority depends upon the *exequatur* or the recognition by a Secretary of State for the British Crown, and not upon the mandate contained in a foreign commission.

„ in the Army Act (44 & 45 Vict. c. 58), s. 94 (1), “any British consul-general, consul, or vice-consul, or person duly exercising the authority of a British consul.”

„ in the Army Act (44 & 45 Vict. c. 58), s. 104, exempts from billeting “the house of residence of any foreign consul duly *accredited* as such.” The word “accredited” is applicable to the foreign consul, while “received” or “recognised” would be more appropriate.

„ in the consular service of Her Majesty, in the Naturalisation Act, 1870 (33 & 34 Vict. c. 14), s. 17, means and includes consul-general, consul, vice-consul, consular agent, and any person for the time being discharging the duties of consul-general, consul, or consular agent.

CONTEXT is not limited to the context of the particular section in which the definition occurs, but means the context of the whole Act. Esher, M.R., *In re Evans*, (1891) 1 Q. B. 144.

CONTINUING OFFENCE.—See *Welsh v. West Ham Corporation*, (1900) 1 Q. B. 324; *Blackpool Corporation v. Johnson*, (1902) 1 K. B. 646; *Mullis v. Hubbard*, (1903) 2 Ch. 431.

[CONTRACT, in 30 & 31 Vict. c. 131, s. 25, means a "contract binding in law, which of course imports a consideration." Per Thesiger, L.J., in *Anderson's case* (1877), 7 Ch. D. 113.]

CONVEYANCE, in 47 & 48 Vict. c. 54, s. 3 (Yorkshire Registry), includes any assignment, appointment, lease or settlement made by deed on a sale, mortgage, demise, or settlement of any land or appointment of a new trustee in respect thereof, which has been executed by one or more of the parties by whom any interest in such land is thereby conveyed." Cf. *Credland v. Potter* (1874), 10 Ch. App. 8, 12, per Lord Cairns.

„ OR ASSIGNMENT, in the Bankruptcy Act, 1883 (46 & 47 Vict. c. 52), s. 4, sub-s. 1 (a), is limited to those particular modes of disposition of property, and means a formal conveyance or assignment properly so called of the whole, or substantially the whole, of the debtor's property. *Re Spackman* (1890), 24 Q. B. D. 741, Fry, L.J. "Conveyance or assignment is an instrument under seal actually transferring the legal and equitable interest in the property, so as to take it out of the assignor and vest it in the assignees," Lopes, L.J.

„ ON SALE, in the Stamp Act, 1891 (54 & 55 Vict. c. 39), ss. 54, 57. See *Inland Revenue Commissioners v. Tod*, (1898) App. Cas. 399; *Chesterfield Brewery Co. v. Inland Revenue Commissioners*, (1898) 2 Q. B. 7; *Swayne v. Inland Revenue Commissioners*, (1899) 1 Q. B. 335; (1900) 1 Q. B. 172 (C. A.); *G. N. R. v. Inland Revenue Commissioners*, (1901) 1 K. B. 416.

CONVICTED OF FELONY, in 33 & 34 Vict. c. 29, s. 14 (Licensing), does not apply to a person who after conviction for felony has received a free pardon. *Hay v. Tower Justices* (1890), 24 Q. B. D. 561.

CO-PARTNERSHIP, in 31 & 32 Vict. c. 116, s. 1, was not used in the sense of co-ownership, as the modern usage confines the meaning of the word to societies formed for gain. *R. v. Robson* (1886), 16 Q. B. D. 140.

COPY, in the Copyright Act, 1842 (5 & 6 Vict. c. 45), includes matter contained in a newspaper registered as a serial publication. *Cate v. Devon Newspaper Co.* (1889), 40 Ch. D. 500; but not perforated music sheets for use on a mechanical organ. *Boosey v. Wright*, (1900) 1 Ch. 122.

„ in Fine Arts Copyright Act, 1862 (25 & 26 Vict. c. 68), s. 11. *Hanfstaengl v. W. H. Smith & Son*, (1905) 1 Ch. 519.

COST OF RELIEF, in 31 & 32 Vict. c. 122 (Poor Law), s. 33, does not mean the cost of relief as fixed by the guardians of the union (to which the deserted wife is chargeable) upon making an order for relief, but what the justices estimate as the proper cost of relief. *Dinning v. South Shields Union* (1884), 13 Q. B. D. 25 (C. A.).

COSTS (DOUBLE).—See *Hasker v. Wood* (1885), 54 L. J. Q. B. 419; *Reeve v. Gibson*, (1891) 1 Q. B. 660. 5 & 6 Vict. c. 97, ss. 1, 2, substituted full for double costs where given by statute prior to

1842; and see the provisions as to costs in the Public Authorities Protection Act, 1893 (56 & 57 Vict. c. 61); and Ann. Pr. 1900, p. 895.

**COSTS** (FULL), in sect. 26 of the Copyright Act, 1842 (5 & 6 Vict. c. 45), means costs as between party and party, and not as between solicitor and client. *Avery v. Wood*, (1891) 3 Ch. 115.

**COTTON CLOTH FACTORY** means "any room, shed, or workshop, or any part thereof, in which the *weaving* of cotton cloth is carried on." Cotton Cloth Factories Act, 1889 (52 & 53 Vict. c. 62), s. 4.

**COUNTY** presumably includes county of a city or of a town. Int. Act, 1889 (c. 63), s. 4, *post*, Appendix C.; and see *ante*, p. 151.

„ in 4 & 5 Will. 4, c. 76 (Poor Law), s. 38, includes a county of a town. *R. v. Pearce* (1880), 5 Q. B. D. 386.

„ COURT, as respects England and Wales—

(a) unless the contrary intention appears, means in every Act and Order in Council passed or made after 1846, "a Court under the County Courts Act, 1888." See Int. Act, 1889 (c. 63), s. 6, *post*, Appendix C.

(b) in the Sheriffs Act, 1887 (50 & 51 Vict. c. 55), s. 18, the common law County Court, now held only for parliamentary elections, and the due execution of writs.

„ COURT, as respects Ireland, in Acts passed after 1889, means a civil bill Court within the meaning of the County Officers and Courts (Ireland) Act, 1877. Int. Act, 1889 (c. 63), s. 29, *post*, Appendix C.

**COURT**.—See *Competent Court*.

**COURT OF APPEAL** means His Majesty's Court of Appeal in England or Ireland. Int. Act, 1889 (c. 63), s. 13 (2), *post*, Appendix C.

„ OF ASSIZE in England, Wales, and Ireland, means a court of assize, a court of oyer and terminer, and a court of gaol delivery, or any of them, and includes the Central Criminal Court. Int. Act, 1889 (c. 63), s. 13 (4), *post*, Appendix C.

„ OF OYER AND TERMINER OR GENERAL GAOL DELIVERY, in the Assizes Relief Act, 1889 (52 & 53 Vict. c. 12), s. 7, includes a court of assize and the Central Criminal Court. See Int. Act, 1889 (c. 63), s. 13 (4), *post*, Appendix C.

„ OF QUARTER SESSIONS means the justices of any county, riding, parts, division, or liberty of a county, or of a county of a city, or county of a town (borough) in general or quarter sessions assembled; and also the court of a recorder of a municipal borough which has a separate court of quarter sessions. Int. Act, 1889 (c. 63), s. 13 (14), *post*, Appendix C.

„ OF SUMMARY JURISDICTION.—See *Summary jurisdiction*.

**CREDITOR** in Bankruptcy Act, 1883 (c. 52), s. 6, does not include a receiver appointed in an action in the Chancery Division, as a receiver has no remedy in his own right against debtors of the

person of whose property he is receiver. *Re Sacker* (1889), 22 Q. B. D. 179 (C. A.). *Quære*, whether includes a *cestui que trust* in respect of claims against a defaulting trustee. *Re Lake*, (1901) 1 K. B. 701.

CREDITOR, in sect. 48 of that Act, means a person who, when a charge or payment is made, is entitled, if bankruptcy supervenes, to prove them and take a dividend. *Re Blackpool Motor Car Co.*, (1901) 1 Ch. 77.

„ in the Companies Act, 1862 (25 & 26 Vict. c. 89), ss. 80, 82, does not include the creditor of a creditor of a company who has obtained a garnishee order attaching a debt due from the company to his debtor. *Re Combined Weighing and Advertising Machine Co.* (1889), 43 Ch. D. 99 (C. A.).

CREDITORS WHOM THE COURT THINKS ENTITLED TO BE HEARD includes outside creditors in the case of a scheme of an arrangement of the affairs of a liquidating railway company. *Re East and West India Dock Co.* (1890), 44 Ch. D. 38.

CRIME, in 33 & 34 Vict. c. 75 (Elementary Education, England), sch. 2, Part I. r. 14, includes a “conspiracy” punishable under the Criminal Law and Procedure (Ireland) Act, 1887 (50 & 51 Vict. c. 20). *Conybeare v. London School Board*, (1891) 1 Q. B. 118.

CRIMINAL CAUSE OR MATTER, in the Judicature Act, 1873, s. 47, does not include any question arising out of the committal of a clergyman for contumacy to an order of the Ecclesiastical Court: *Cox v. Hakes* (1890), 15 App. Cas. 506; nor an order striking a solicitor off the rolls: *Re Eade* (1890), 25 Q. B. D. 228; and refusal of bail on an indictment: *R. v. Foote* (1883), 10 Q. B. D. 378.

„ includes decision on a *habeas corpus* under the Extradition Acts, 1870 and 1873. *Re Alice Woodhall* (1889), 20 Q. B. D. 832.

„ includes a proceeding to compel a magistrate to state a case upon a point of law arising in a criminal cause or matter. *Re Schofield*, (1891) 2 Q. B. 428.

„ includes proceedings for penalties before a magistrate under the London Building Acts: *Payne v. Wright*, (1892) 1 Q. B. 104; 66 L. T. 148; and proceedings for penalties under the Companies Act, 1862, s. 27; *R. v. Tyler*, (1891) 2 Q. B. 588; or proceedings to enforce payment of rates which might end in imprisonment: *Seaman v. Burley*, (1896) 2 Q. B. 344; and see *Raydon v. South Met. Tramways Co.*, (1893) 2 Q. B. 304.

CRIMPING.—*R. v. Abrahams*, (1904) 2 K. B. 859; *R. v. Goldberg*, (1904) 2 K. B. 866.

CROWN.—See Interpretation Act, 1889, s. 30, *post*, Appendix C.

CRUELTY, in the Matrimonial Causes Act, 1857 (20 & 21 Vict. c. 85), s. 22, considered. *Russell v. Russell*, (1897) App. Cas. 395.

CUSTOM was not used in 5 & 6 Will. 4, c. 76, s. 2, in the technical sense of the word, but was only equivalent to "usage." *Prestney v. Mayor of Colchester* (1882), 21 Ch. D. 120.

CUSTOMER, of a banker, in sect. 82 of the Bills of Exchange Act, 1882 (45 & 46 Vict. c. 61), see *G. W. R. v. London and County Banking Co.*, (1899) 2 Q. B. 172; (1900) 2 Q. B. 645; *Mathews v. Brown* (1894), 63 L. J. Q. B. 494.

DAY.—[“Our law,” said Sir W. Grant in *Lester v. Garland* (1808), 15 Ves. 248, “rejects fractions of a day more generally than the civil law does, the effect of which is to render the day a sort of indivisible point, so that any act, done in the compass of it, is no more referable to any one than to any other portion of it, but the act and the day are co-extensive, and therefore the act cannot properly be said to be passed until the day is passed.” “It is a well-known maxim that the law takes no notice of the fractions of a day . . . except where there are conflicting rights between subject and subject.” *Tomlinson v. Bullock* (1879), 4 Q. B. D. 230, 232; and see *Re Railway Sleepers Supply Co.* (1885), 29 Ch. D. 204; *Goldsmiths’ Co. v. West Metrop. Rail. Co.*, (1904) 1 K. B. 1. But if a statute enacts that “a licence shall commence on the day on which the same shall be granted,” it “does not” (*Campbell v. Strangeways* (1878), 3 C. P. D. 107) “necessarily mean that it shall begin at the first moment of the day”; therefore, if a person does the thing requiring a licence without having previously taken out a licence, the taking out a licence later in the day will not exonerate him from the penalty to which he became liable for doing the thing without having previously taken out a licence. For “though” (*Combe v. Pitt* (1763), 3 Burr. 1423, 1434) “the law does not in general allow of the fraction of a day, yet it admits it in cases where it is necessary to distinguish. And I do not see why the very hour may not be so too, where it is necessary and can be done, for it is not like a mathematical point which cannot be divided.” In *Chick v. Smith* (1840), 8 Dowl. 340, Patteson, J., said: “The good sense of the matter is that, where it is necessary to show which was the first of two acts, the Court is at liberty to consider fractions of a day. The rule of law would be otherwise absurd.” *Vide Clarke v. Bradlaugh* (1881), 7 Q. B. D. 151.]

DAYS.—“In any case in which any particular number of days not expressed to be clear days is prescribed by the Rules of the Supreme Court, the same shall be reckoned exclusively of the first day and inclusively of the last day.” R. S. C. 1883, Ord. LXIII. r. 12. This definition accords with *Williams v. Burgess* (1840), 12 A. & E. 635; and *Radcliffe v. Bartholomew*, (1892) 1 Q. B. 161; *Re North*, (1895) 2 Q. B. 264.

„ in the County Court Rules, 1903, “clear days means that in all cases in which any particular number of days is prescribed for the doing of any act or for any other purpose, the same is to be reckoned exclusive both of the first and of the last day.” Ord. LV.

DAYS.—“Not less than fourteen days” has been read to mean fourteen clear days in *Re Railway Sleeper's Supply Co.* (1885), 29 Ch. D. 204; see *McQueen v. Jackson*, (1903) 2 K. B. 163; *R. v. Shropshire JJ.* (1838), 8 A. & E. 173; *Chambers v. Smith* (1843), 12 M. & W. 2.

„ as to “days” in marine insurance policies, see *Cornfoot v. Royal Exchange Assurance Corporation*, (1904) 1 K. B. 40 (C. A.).

DEALER IN SPIRITS, in sect. 2 of the Excise Licence Act, 1825 (6 Geo. 4, c. 81). *Tinwell v. Mayhook*, (1904) 2 K. B. 790.

DEALINGS, in sect. 17 of the Bankruptcy Act, 1883 (46 & 47 Vict. c. 52), refers to matters particularly connected with the bankruptcy as distinguished from conduct, *i.e.* the bankrupt's general conduct. Per Lord Coleridge, C.J., in *In re A Solicitor* (1890), 25 Q. B. D. 17, 25.

DEBENTURE “is a word which has somehow crept into the English language, and does not appear to admit of any accurate definition, but it is recognised by the statute as something different from a promissory note.” *British India, &c. Co. v. Commissioners of Inland Revenue* (1881), 7 Q. B. D. 165, 170. “A debenture means a document which either creates a debt or acknowledges it, and any document which fulfils either of these conditions is a debenture.” *Levy v. Abercorris Slate, &c. Co.* (1887), 37 Ch. D. 260, 264, Chitty, J., where the derivation and history of the word is discussed. See the Stamp Act, 1891 (54 & 55 Vict. c. 39, sched.).

„ STOCK.—See *Attree v. Hawe* (1878), 9 Ch. D. 349 (C. A.); *Re Crossley*, (1897) 1 Ch. 928.

DEBT [in 9 Geo. 4, c. 14, s. 5, means “actionable debt.” *Rawley v. Rawley* (1876), 1 Q. B. D. 463].

„ claim or demand, in the Poor Law Payment of Debts Act, 1859 (22 & 23 Vict. c. 49). See *West Ham Guardians v. Bethnal Green Churchwardens, &c.*, (1896) App. Cas. 477.

„ [in 30 & 31 Vict. c. 69 (Mortgages), s. 1, does not include mortgage debt. *Newmarch v. Storr* (1878), 9 Ch. D. 12].

„ within the Bankruptcy Act, 1883, s. 18 (3), means everything which might mature into a debt, including all liabilities from which a bankrupt would be relieved by an order of discharge. *Flint v. Barnard* (1888), 22 Q. B. D. 90.

„ see *Spence v. Coleman*, (1901) 2 K. B. 199.

„ IMPRISONMENT FOR, in 32 & 33 Vict. c. 62 (Debtors), does not include imprisonment under a committal order. *Mitchell v. Simpson* (1889), 23 Q. B. D. 373; *Stonor v. Fowle* (1887), 13 App. Cas. 20.

DEBTOR, in the Bankruptcy Act, 1883 (46 & 47 Vict. c. 52), see *Re A. B. & Co.*, (1900) 1 Q. B. 541; (1901) A. C. 102.

DECLARATION, STATUTORY, see Int. Act, 1889, s. 21, *post*, Appendix C.

[DEED, in the Forgery Act, 1861 (24 & 25 Vict. c. 98), s. 20, means something which passes a pecuniary interest. *R. v. Morton* (1873), L. R. 2 C. C. R. 27, Blackburn, J.]

“DEFAULT, OWNER IN,” in sect. 257 of the Public Health Act, 1875, means “one who has not performed his share of the works requisite,” *i.e.*, so much of the work specified in the notice under the section as applies to him. *Simcox v. Handsworth L. B.* (1881), 8 Q. B. D. 39.

DEFECT OR INACCURACY, in sect. 7 of the Employers’ Liability Act, 1880 (43 & 44 Vict. c. 42), as applied to notice of action, includes the omission of the date in the notice of action required by the section. *Carter v. Drysdale* (1883), 12 Q. B. D. 91.

“IN CONDITION OF MACHINERY (in the same Act) means unfitness for the purpose for which the machine is supplied. *Heske v. Samuelson* (1883), 12 Q. B. D. 30. Even if each part is sufficient, yet if the whole arrangement is defective it is a defect within the Act. *Cripps v. Judge* (1884), 13 Q. B. D. 583.

[DEFINE, in sect. 35 of the Victoria Constitution Act, 1855 (18 & 19 Vict. c. 55), which empowers the Victorian Parliament to define its privileges, &c., means “declare,” and not merely “specify” or “enumerate.” *Dill v. Murphy* (1864), 1 Moore, P. C. N. S. 487.]

DEFINITE AND CERTAIN, in the Stamp Act, 1870 (33 & 34 Vict. c. 97), Sched. s. v. “Settlement,” applied, not to the interest or the nature of the interest of the settlor, but to the amount of the stock put into settlement. *Onslow v. Commissioners of Inland Revenue*, (1891) 1 Q. B. 239. See now Stamp Act, 1891, Sched. s. v. “Settlement.”

DEFRAUD, INTENT TO, in sect. 2 of the Merchandise Marks Act, 1887 (50 & 51 Vict. c. 28), means to make the purchaser take something which he did not know he was taking, not putting off a bad article in order to get money unfairly. *Starey v. Chilworth Gunpowder Co.* (1890), 24 Q. B. D. 96. It means more than an intent to cheat a customer, and means more than to induce the buyer to accept goods which might otherwise be rejected. (Same case.)

[DELINEATED, in the Pontypool Railway Act, 1865, s. 23, does not mean “surrounded in every part by lines,” but “sketched or represented or so shown that landowners would have notice that the land might be taken.” *Dowling v. Pontypool Rail. Co.* (1874), L. R. 18 Eq. 714, 740.] See hereon *Protheroe v. Tottenham, &c. Rail. Co.*, (1891) 3 Ch. 278; *Cripps on Compensation* (5th ed.).

DEPENDENTS, in the Workmen’s Compensation Act, 1897 (c. 37). See *Main Colliery Co. v. Davies*, (1900) App. Cas. 358; *Rees v. Penrikyber Navigation Colliery Co.*, (1903) 1 K. B. 259 (C. A.).

DEPENDING.—See *Suit depending*.



DERIVED, when used with reference to profits of a trade or business, held equivalent to "arising" or "accruing." *Commissioners of Taxes v. Kirk*, (1900) App. Cas. 588, 592.

DESCRIPTION OF NETS, in sect. 39 of Salmon Fishery Act, 1873 (36 & 37 Vict. c. 71). *Clayton v. Peirse*, (1904) 1 K. B. 424.

DESERTED, in 24 & 25 Vict. c. 55, s. 3, is not used "in the ordinary acceptation of the word, but the statute must be taken to mean that, where the husband permanently gives up the society of his wife and continues to live in a different place apart from her, she shall be looked up to as a different person from what she would otherwise be, for she resides where she does for her own, and not for any marital purpose." *R. v. Maidstone Union* (1880), 5 Q. B. D. 31, 33, Cockburn, C.J.

DESERTION, in the Matrimonial Causes Acts. See *Mahony v. M'Carthy*, (1892) P. 21; *R. v. Le Resche*, (1891) 2 Q. B. 418; *Wynne v. Wynne*, (1898) P. 18; *Bradshaw v. Bradshaw*, (1897) P. 24; *De Laubenque v. De Laubenque*, (1899) P. 42; *Sickert v. Sickert*, (1899) P. 278; *Synge v. Synge*, (1900) P. 180.

„ under the Summary Jurisdiction (Married Women) Act, 1895. See *Frowd v. Frowd*, (1904) P. 177; *Dodd v. Dodd*, (1906) P. 74.

DESIGN, in sect. 60 of the Patents, Designs, and Trade Marks Act, 1883 (46 & 47 Vict. c. 57), is not used in a technical sense, as excluding anything that would ordinarily fall within it. *Heath v. Rollason*, (1898) App. Cas. 499. It refers only to the shape or visible form of the object represented, and not to the object which the design has in view in adopting the shape or the particular purpose which the shape is intended to serve. *Hecla Foundry Co. v. Walker & Co.* (1889), 14 App. Cas. 550; and see *Holdsworth v. McCrea* (1867), L. R. 2 H. L. at p. 388; *Walker v. Falkirk Iron Co.* (1887), 14 Rettie (Sc.), 1081.

DETERMINATION OF TENANCY.—Agricultural Holdings Act, 1883, s. 7, construed. *Re Paul* (1890), 24 Q. B. D. 247; *Black v. Clay*, (1894) App. Cas. 368; *Morley v. Carter*, (1898) 1 Q. B. 8. See now Agricultural Holdings Act, 1900 (63 & 64 Vict. c. 50).

DEVIATION, in special Acts, means shifting the authorised work in its integrity from one site to another which may be deemed more suitable. It does not imply a right not only to shift the situation, but to dispense with half or two-thirds the work. *Herron v. Rathmines and Rathgar Commissioners*, (1892) App. Cas. 498, 526, Lord Macnaghten. Cripps on Compensation (4th ed.), 18.

[DEVISE, in sect. 6 of the Statute of Frauds (29 Chas. 2, c. 3), means "that group or collection of words reduced into writing which operates as a disposition of the testator's land." *Swinton v. Bailey* (1878), 4 App. Cas. 70, 79, Lord Penzance.]

„ in the Wills Act (7 Will. 4 & 1 Vict. c. 26), "includes, unless a contrary intention appears by the will, a devise by way of appointment under a special or general power conferred on the testator as to property not his own." *Freme v. Clement* (1881), 18 Ch. D. 515, Jessel, M.R.

DIPLOMATIC OFFICER in the diplomatic service of Her Majesty, in the Naturalisation Act, 1870, c. 14, means any "Ambassador, Minister, or Chargé d'affaires, or Secretary of Legation, or any person appointed by such Ambassador, Minister, Chargé d'affaires, or Secretary of Legation to execute any duties imposed by the Act on an officer in the diplomatic service of Her Majesty" (sect. 17).

„ REPRESENTATIVE OF A FOREIGN STATE," for the purposes of the Extradition Acts, 1870 and 1873, "includes any person recognised by a Secretary of State as a consul-general of that State." Ext. Act, 1873 (c. 60), s. 7, extending Ext. Act, 1870 (c. 52), s. 7.

„ SERVICE.—Enumeration of diplomatic offices in the Diplomatic Salaries Act, 1869 (c. 43), s. 7.

DIRECT COMMUNICATION, in sects. 7, 9 of the London Building Act, 1894 (57 & 58 Vict. c. cxxiii.), considered. *Woolham v. London County Council*, (1898) 1 Q. B. 863; *Armstrong v. London County Council*, (1900) 1 Q. B. 416.

DIRECT TAXATION, in the British North America Act, 1867. See *Bank of Toronto v. Lambe* (1887), 12 App. Cas. 575; *Brewers, &c. Association of Ontario v. Att.-Gen. for Ontario*, (1897) App. Cas. 231.

DISABILITY, in the Naturalisation Act, 1870, c. 14, s. 17, means the status of being an infant, lunatic, idiot, or married woman.

DISCHARGE, in Stamp Act, 1891, sched. tit. Mortgage, sub-head 5. *Firth & Sons v. Inland Revenue Commissioners*, (1904) 2 K. B. 205, Channell, J.

DISCONTINUANCE, in R. S. C. 1883, Ord. XXVI., r. 1, includes both non-suit at common law and the right of a plaintiff in Chancery to dismiss his own bill. *Fox v. Star Newspaper Co.*, (1898) 1 Q. B. 636; (1900) App. Cas. 19.

DISCRETION.—*Vide ante*, p. 241.

DISPOSITION, in 3 & 4 Will. 4, c. 74 (Fines and Recoveries Act), s. 38, is not restricted to the deed barring the entail, but comprises it and all other instruments by which the arrangement between the vendor and the purchaser is carried out. *Crocker v. Waine* (1864), 5 B. & S. 697.

DISPUTE, in Arbitration Act, 1889 (52 & 53 Vict. c. 49). See *Parry v. Liverpool Malt Co.*, (1900) 1 Q. B. 339 (C. A.).

„ [IN THE EMPLOYERS AND WORKMEN'S ACT, 1875 (38 & 39 Vict. c. 90), s. 4, includes a complaint made by the employer as to the conduct of the workman. *Clemson v. Hubbard* (1875), 1 Ex. D. 179.]

DISTANCE, when mentioned in a statute, how computed. See *Mile*.

"DISTINCTIVE WORDS," in the Patents, &c. Act, 1883. See *Hopkinson's Trade Mark*, (1892) 2 Ch. 116.

DISTRIBUTED IN DIVIDEND, in the Bankruptcy Act, 1883 (46 & 47 Vict. c. 52, s. 72). *Re Christie*, (1900) 1 Q. B. 5.

DIVIDED, in 41 & 42 Vict. c. 15, s. 13 (Revenue), refers to the structural arrangement of the houses taxed by the Act, and not to the mode of dealing with the divided houses. *Yorkshire Insurance Co. v. Clayton* (1881), 8 Q. B. D. at p. 420, Brett, L.J.

DIVIDEND, in 33 & 34 Vict. c. 35 (Apportionment), s. 2, "includes (besides dividends strictly so called) all payments made by the name of dividend, bonus, or otherwise, out of the revenue of trading or other public companies, divisible between all or any of the members of such respective companies, whether such payments shall be usually made or declared at any fixed time or otherwise." *Carr v. Griffiths* (1879), 12 Ch. D. 655, 661; and see *Bond v. Barrow Haematite Co.*, (1902) 1 Ch. 353; *Lamplough v. Proprietors of Kent Water Works*, (1903) 1 Ch. 575 (C. A.).

DOCUMENT, unless the context otherwise requires, "includes part of a document." Official Secrets Act, 1889 (52 & 53 Vict. c. 52), s. 8.

„ OF TITLE TO GOODS, in the Factors Act, 1889 (52 & 53 Vict. c. 45), s. 1 (4), includes "bill of lading, dock warrant, warehouse-keeper's certificate, and warrant or order for the delivery of goods, and any other document used in the ordinary course of business as proof of the possession or control of goods, or authorising or purporting to authorise, either by indorsement or by delivery, the possessor of the document to transfer or to receive goods thereby represented."

DOMESTIC ANIMALS, in 12 & 13 Vict. c. 92, s. 2 (as amended by 17 & 18 Vict. c. 60, s. 3), includes any pet bird, and also birds kept in captivity and trained as decoy birds. *Colam v. Paget* (1884), 12 Q. B. D. 66.

DOMESTIC PURPOSES, in Acts relating to supply of water. See *Pidgeon v. Great Yarmouth Water Works*, (1902) 1 K. B. 310; *Barnard Castle U. D. C. v. Wilson*, (1902) 2 Ch. 746 (C. A.).

DOMICILED IN ENGLAND, in the Bankruptcy Act, 1883 (46 & 47 Vict. c. 52), s. 6 (1), means "England" as distinguished from other parts of the United Kingdom. *Re Mitchell* (1884), 13 Q. B. D. 418.

DOMINION.—See *Foreign dominion*.

DOUBLE COSTS.—See *Costs*.

DRAIN, in the Metropolis Management Acts, 1855 and 1862. *Bethnal Green Vestry v. London School Board*, (1898) App. Cas. 190; *Greater London Property Co. v. Foot*, (1899) 1 Q. B. 972.

„ in the Public Health Acts. *Thompson v. Eccles*, (1905) 1 K. B. 110; *Haediche v. Friern Barnet U. D. C.*, (1904) 2 K. B. 807; *Hedley v. Webb*, (1901) 2 Ch. 126; *Wood Green U. D. C. v. Joseph* (1905), W. N. 144; *Poley on Sewers*, &c., 37, 41.

DRIVER or DRIVERS, in sects. 37, 40—52, 54, 58, 60—67 of the Town Police Clauses Act, 1847 (10 & 11 Vict. c. 89), includes the conductor of an omnibus. Town Police Clauses Act, 1889, c. 14, s. 4 (1).

DRUNKENNESS.—See *Permit drunkenness*.

DULY MADE.—A contract “made in writing,” in the Companies Act, 1867 (30 & 31 Vict. c. 131), s. 25, means a contract executed by all the parties thereto. *Ex parte Menzies*, (1890) 43 Ch. D. 118.

DWELL, in the County Courts Act, 1888 (51 & 52 Vict. c. 43), s. 74, applies to temporary as well as permanent residence. See *Alexander v. Jones* (1876), L. R. 1 Ex. 133, decided on 9 & 10 Vict. c. 95, s. 128. Cf. *Riley v. Read* (1879), 4 Ex. D. 100.

DWELLING-HOUSE, in 41 & 42 Vict. c. 26 (Parliamentary and Municipal Registration), s. 5, means a part of a house separately occupied, not by a lodger merely, but in such a manner that the occupier can be separately rated to the relief of the poor. *Bradley v. Baylis* (1881), 8 Q. B. D. 195.

„ in 5 & 6 Vict. c. 35 (Income Tax), s. 100, Sch. D, “does not include a house in which a bank or limited company carries on business,” even if the manager lives in part of it. *Russell v. Town and County Bank* (1888), 13 App. Cas. 418, 430; cf. *Tennant v. Smith*, (1892) App. Cas. 150.

„ in the Bankruptcy Act, 1883, s. 6 (d), for purposes of founding bankruptcy jurisdiction over a foreigner, held to include “furnished rooms” taken under circumstances which did not make the hirer a lodger. *Re Hecquard* (1890), 24 Q. B. D. 74; cf. *Ex parte Maxim Nordenfeldt Co.*, (1895) 1 Q. B. 151.

„ A dwelling-house need not be a separate building. It may be bounded by a horizontal plane just as well as by a vertical plane, and would therefore include a *flat*, but not lodgings, nor rooms in a hotel. See *Allchurch v. Hendon Assessment Committee*, (1891) 2 Q. B. 436; and cf. *Kimber v. Admans*, (1900) 1 Ch. 412; *Rogers v. Hosegood*, (1900) 2 Ch. 389; *Robertson v. King*, (1901) 2 K. B. 265; *Weatherell v. Cantley*, (1901) 2 K. B. 285; *Nicholls v. Malim*, (1906) 1 K. B. 272; *Lewin v. End*, (1906) A. C. 299.

EARNINGS.—See *Abram Coal Co. v. Southern*, (1903) App. Cas. 306.

ECCLESIASTICAL CHARITY, in the Local Government Act, 1894 (56 & 57 Vict. c. 73), unless the context otherwise requires, includes a charity the endowment whereof is held for some one or more of the following purposes :—

- (a) For any spiritual purpose which is a legal purpose; or
- (b) For the benefit of any spiritual person or ecclesiastical officer as such; or

- (c) For use of a building as a church, chapel, mission-room or Sunday-school, or otherwise, by any particular Church or denomination; or
- (d) For the maintenance, repair, or improvement of any such building as aforesaid, or for the maintenance of divine service therein; or
- (e) Otherwise for the benefit of any particular Church or denomination, or of any members thereof as such, *i.e.* to the exclusion of non-members, whether the benefit is religious or temporal. *Re Perry Almshouses*, (1899) 1 Ch. 21, 30 (C. A.).

This definition does not purport to be complete (*loc. cit.* p. 29, Lindley, M.R.), and does not exclude eleemosynary charities (*loc. cit.* 36, Chitty, L.J.).

ECCLESIASTICAL COMMISSIONERS.—The Ecclesiastical Commissioners for England [and Wales] for the time being. Int. Act, 1889 (c. 63), s. 12 (15), *post*, Appendix C.

- „ PURPOSE, in 19 & 20 Vict. c. 104 (Lord Blandford's Act), s. 14, includes “burial of the dead.” *Hughes v. Lloyd* (1888), 23 Q. B. D. 157. So that when a parish is divided under that Act for ecclesiastical purposes, parishioners in the old undivided parish cease to have any right of interment in the old parish churchyard unless they are resident within the ecclesiastical district within which it lies. It also includes publishing banns and solemnising marriages. *Fuller v. Alford* (1883), 10 Q. B. D. 418. Spiritual purposes is distinct. See 6 & 7 Vict. c. 37, ss. 9 and 15.

EDUCATION DEPARTMENT.—See Int. Act, 1889 (c. 63), s. 12 (6), *post*, Appendix C. But see 62 & 63 Vict. c. 33.

- „ DEPARTMENT, SCOTCH, in all Acts, means “the Lords of the Committee for the time being of the Privy Council appointed for Education in Scotland.” Int. Act, 1889 (c. 63), s. 12 (7), *post*, Appendix C, taken from sect. 1 of the Scotch Education Act, 1870.

EFFLUVIA INJURIOUS TO HEALTH, in 38 & 39 Vict. c. 55, s. 114, include an effluvium which causes sick persons to become worse, although not injurious to persons in sound health. *Malton Urban Sanitary Authority v. Malton Manure Co.* (1879), 4 Ex. D. 302.

[EMOLUMENT in 31 & 32 Vict. c. 110, s. 8 (7), is the most comprehensive word the Legislature could have used to describe the profits of an office. *R. v. Postmaster-General* (1878), 3 Q. B. D. 428, 430.] See *Livingstone v. Mayor, &c. of Westminster*, (1904) 2 K. B. 109, 117, Buckley, J.; and *Remuneration*.

- „ in sched. I. of the Income Tax Act, 1842 (5 & 6 Vict. c. 35). See *Tennant v. Smith*, (1892) App. Cas. 150.

EMPLOYED, in sect. 143 of the Army Act (44 & 45 Vict. c. 58), is not equivalent to “used.” *Craig v. Nicholson*, (1900) 2 Q. B. 444.

ENDOWMENT in 16 & 17 Vict. c. 137 (Charitable Trusts).—See *Re Clergy Orphan Corporation*, (1894) 3 Ch. 145. *Re Stockport Schools*, (1898) 2 Ch. 687 (C. A.); *Re Church Army*, (1906), W. N. 73.

ENFRANCHISEMENT, in sect. 18 of the Settled Land Act, 1882 (45 & 46 Vict. c. 38), held to include conversion of leaseholds into freeholds by purchase of reversion. *Re Bruce*, (1905) 2 Ch. 372, Kekewich, J.

ENGINEERING WORK, in sect. 7 of the Workmen's Compensation Act, 1897.—See *Bach v. Dick Kerr & Co.*, (1906) App. Cas. 325; *Rogers v. Cardiff (Mayor, &c. of)*, (1905) 2 K. B. 832; *Adams v. Shaddock*, (1905) 2 K. B. 859; *Tullock v. Waygood*, (1906) 2 K. B. 261.

ENGLAND, in sect. 5 of 1889, c. 72, shall mean Scotland in the application of the Act to Scotland (sect. 17). This ought to have been done by defining "place of abode," with reference to that part of the United Kingdom in which the local authority giving the notice exercises its functions.

[ENTERTAINMENT, in sect. 6 of the Refreshment Houses Act, 1860 (23 & 24 Vict. c. 27), does not merely apply to public entertainments, like concerts, but also to the general accommodation provided in refreshment-rooms. *Muir v. Keay* (1875), L. R. 10 Q. B. 594; *Howes v. Inland Revenue* (1876), 1 Ex. D. 394.

„ OR AMUSEMENT, in 21 Geo. 3, c. 49, s. 1, does not apply to proceedings of a religious nature. *Baxter v. Langley* (1868), L. R. 4 C. P. 21.]

"EQUITABLE INTEREST IN PROPERTY," in the Stamp Act, 1891 (54 & 55 Vict. c. 39), s. 59.—See *Muller & Co.'s Margarine, Ltd. v. Inland Revenue Commissioners*, (1900) 1 Q. B. 310.

EVADE.—See *Bullivant v. Att.-Gen. for Victoria*, (1901) App. Cas. 196.

EXCESSIVE WEIGHT, in sect. 23 of the Highways, &c. Act, 1878 (41 & 42 Vict. c. 77), applies only to the load carried on a single vehicle. *Hill v. Thomas*, (1893) 2 Q. B. 333.

[EXECUTE, in the Indian Wills Act, 1838 (No. XXV.), s. 7, "is employed to designate the whole operation [of making a will], including both the signature and acknowledgment of the testator and the attestation of the subscribing witnesses." *Casement v. Fulton* (1845), 5 Moore, P. C. 141.]

EXERCISE, in the Patents, &c. Act, 1883.—See *Saccharin Corporation v. Reitmeyer & Co.*, (1900) 2 Ch. 659; *Badische Anilin und Soda Fabrik v. Hickson*, (1905) 2 Ch. 495; (1906) App. Cas. 419.

EXPORTATION.—See *Stockton and Darlington Rail. Co. v. Barrett* (1844), 11 Cl. & F. 590; 8 Eng. Rep. 1225.

EXPOSED FOR SALE, in the Margarine Act, 1887 (c. 29), s. 6, means exposed to view in the shop in the sight of the purchaser. *Crane v. Lawrence* (1890), 25 Q. B. D. 152; *contra*, *Wheat v. Brown*, (1892) 1 Q. B. 418.

EXTENSION OF A ROAD, what is included in.—See *Shanghai Municipal Council v. McMurray*, (1900) App. Cas. 206.

EXTRAORDINARY TRAFFIC, in sect. 23 of 41 & 42 Vict. c. 77, includes all such continuous and repeated user of a highway by the vehicles of one person as is out of the common order of traffic on the highway, and is calculated to damage the highway and increase the expenditure on its repair. *Hill v. Thomas*, (1893) 2 Q. B. 333; *Etherley Grange Coal Co. v. Auckland District Highway Board*, (1894) 1 Q. B. 37; *Kent County Council v. Vidler*, (1895) 1 Q. B. 448. It includes the passage of traction engines and trucks over a highway connecting two main roads, and used principally by farmers of land adjoining it for ordinary traffic. *R. v. Ellis* (1882), 8 Q. B. D. 460. See 61 & 62 Vict. c. 29, s. 13; *Kent County Council v. Folkestone (Mayor, &c.)*, (1905) 1 K. B. 620.

FACTORY, (1) in the Factory, &c. Act, 1901. *Horner v. Franklin*, (1905) 1 K. B. 479; *Spacey v. Dowlais Gas & Coke Co.*, (1905) 2 K. B. 879; *Barrett v. Kemp Bros.*, (1904) 1 K. B. 517; *Dyer v. Swift Cycle Co.*, (1904) 2 K. B. 36; *Brass v. L. C. C.*, (1904) 2 K. B. 336. (2) in Workmen's Compensation Act, 1897. *Fenn v. Miller*, (1900) 1 Q. B. 788; *Francis v. Turner*, (1900) 1 Q. B. 478.

FALSE or UNJUST, in sect. 26 of the Weights and Measures Act, 1878 (41 & 42 Vict. c. 49), applies to a weighing machine used by putting it into a scoop containing the article to be weighed, and having fixed to it a piece of paper, weighing less than the bag in which the article weighed was to be delivered to the purchaser. *Lane v. Rendall*, (1899) 2 Q. B. 673. *L. C. C. v. Payne*, (1904) 1 K. B. 194; (1905) 1 K. B. 410.

„ PRETENCE, within the Larceny Act, 1861 (24 & 25 Vict. c. 96), s. 90, must be *an existing fact*. But the Courts take wide views as to what is an existing fact. *R. v. Gordon* (1889), 23 Q. B. D. 355. Sect. 90 was passed because of an earlier case. *R. v. Dangar* (1857), Dearsley & Bell, 307.

„ TRADE DESCRIPTION, in the Merchandise Marks Act, 1887 (c. 28). See *Kirschenboim v. Salmon & Gluckstein, Ltd.*, (1898) 2 Q. B. 19.

FALSELY PACKED, in the Hops Act, 1866 (29 & 30 Vict. c. 37), s. 5, means not substantially according to sample. *Johnson v. Gaskain* (1891), 8 Times L. R. 70.

[FATHER, in 4 & 5 Ph. & Mar. c. 8, s. 3, which imposes a penalty upon any person who “takes away any woman-child out of the custody of the father of such child,” includes the putative father of an illegitimate child. *R. v. Cornforth* (1740), 2 Str. 1162.] This decision seems to apply to sect. 55 of the Offences Against the Person Act, 1861 (24 & 25 Vict. c. 100), which has taken the place of the earlier Act. Archb. Cr. Pl. (23rd ed.).

FELONY.—Acts declaring any act or omission to be felony attach to the act or omission all the incidents for the time being attached by common law or other past or future statutes to felonies. *Vide ante*, p. 286.

FELONY in Acts extending or applied to Scotland = high crime and offence. Int. Act, 1889 (c. 63), s. 28, *post*, Appendix C. A like provision is common in Acts prior to that date, and in them is not superseded by the later Act.

FEMALE.—*Vide Masculine*; and *ante*, p. 149.

FICTITIOUS OR NON-EXISTENT, in 45 & 46 Vict. c. 61 (Bills of Exchange), s. 7 (3), considered in *Bank of England v. Vagliano*, (1891) App. Cas. 107. Cf. *Clutton v. Attenborough*, (1896) App. Cas. 90; *Vinden v. Hughes*, (1905) 1 K. B. 410; *Macbeth v. North and South Wales Bank*, (1906) 2 K. B. 719.

FIELDMASTER or FIELD-REEVE means a person appointable to superintend the ordering, fencing, cultivating and improving of open and common fields. (1772, 12 Geo. 3, c. 81, s. 3.)

FINAL JUDGMENT, in the Bankruptcy Act, 1883 (46 & 47 Vict. c. 52), s. 4, does not include an order by consent to pay costs: *Ex parte Schmitz* (1884), 14 Q. B. D. 509; nor an order to pay costs paid on a motion in bankruptcy: *Ex parte Official Receiver*, (1895) 1 Q. B. 609; nor an order on a co-respondent in a divorce suit to pay petitioner's costs: *Ex parte Dale*, (1893) 1 Q. B. 199. Nor does it include a garnishee order absolute: *Ex parte Chinery* (1883), 12 Q. B. D. 342; although by the Judicature Act, 1873, orders are enforceable in the same way as judgments. But judgment in an action for costs payable under an interlocutory order is final: *Ex parte M'Dermott*, (1895) 1 Q. B. 611; and see *Ex parte Alexander*, (1892) 1 Q. B. 216; *Re G. T.*, (1905) 2 K. B. 678 (C. A.); *Huntly (Marchioness) v. Gaskell*, (1905) 2 Ch. 656 (C. A.).

FINANCIAL RELATIONS, of local authorities in the Local Government Acts, 1888 and 1894.—See *Caterham U. D. C. v. Godstone R. D. C.*, (1904) App. Cas. 171; *Re Durham County Council and County Borough of West Hartlepool*, (1906) 2 K. B. 186 (C. A.).

FINANCIAL YEAR.—*Vide ante*, p. 151.

FLOATING CHARGE.—See *Illingworth v. Houldsworth*, (1904) App. Cas. 355.

FLOTATION of a company.—See *Torra Gold Mining Syndicate v. Kelly*, (1900) App. Cas. 612.

FOREIGN DOMINION, in 25 & 26 Vict. c. 20, s. 1 (Habeas Corpus), means "a country which at some time formed part of the dominions of a foreign State or potentate, but which by conquest or cession has become a part of the dominions of the Crown of England." Per Cockburn, C.J., in *Ex parte Brown* (1864), 5 B. & S. 290.

FOREIGN POSSESSIONS, in the Income Tax Acts (5 & 6 Vict. c. 35, s. 100, and 16 & 17 Vict. c. 34, s. 2, Sch. D), applies to profits and gains entirely earned abroad, but does not apply where the business is domiciled in England, nor to profits earned by a trader carrying on one single business partly in the United



Kingdom and partly elsewhere, even though they are not re-mitted to the United Kingdom. *London Bank of Mexico v. Apthorpe*, (1891) 1 Q. B. 383; *Colquhoun v. Brooks* (1889), 14 App. Cas. 493. See *San Paulo Brazilian Rail. Co. v. Carter*, (1896) App. Cas. 31.

FORFEIT (1) in a statute presumably means forfeit to the King. *Dr. Foster's cases* (1614), 11 Co. Rep. 60. *Cf.* 1 Co. Inst. 159.

„ (2) in statutes properly applies to penalties, and not to damages, but in contracts it may apply to damages if the context so requires. See *Clydebank Engineering Co.*, (1905) App. Cas. 6, 9; *Public Works Commissioner, Cape Colony v. Hills*, (1906) App. Cas. 368.

[FORFEITURE, as used in sect. 103 of the Merchant Shipping Act, 1854 (repealed but re-enacted as sect. 76 of the Merchant Shipping Act, 1894, 57 & 58 Vict. c. 60), implies that the property forfeited “is divested by the offence committed,” even before the property is seized on behalf of the Crown. *The Annandale* (1876), 2 P. D. 219; and see Sedgwick, Statutory Law (2nd ed.), p. 78.]

FORMED, in the Companies Act, 1862 (25 & 26 Vict. c. 89), s. 4, is used in its proper sense, and not technically; consequently, a society originally instituted in 1861 need not be registered under the Act even if the effect of its constitution is to create a new partnership from time to time between its members subsequent to the commencement of the Companies Act, 1862. *Shaw v. Simmons* (1883), 12 Q. B. D. 117.

FORTHWITH, [“in an Act of Parliament, has [in several cases] been construed to mean ‘in a reasonable time,’ as soon as the party who is to perform the act can reasonably perform it.” *R. v. Price* (1853), 8 Moore, P. C. 213; and see *Immediately*].

„ in 9 Geo. 4, c. 31, s. 27, means “forthwith if demanded.” *Coster v. Hetherington* (1859), 1 E. & E. 802.

„ in sect. 3 of the Bastardy Act, 1846 (8 & 9 Vict. c. 10), means “with due and proper diligence and without any delay which cannot be satisfactorily explained.” *R. v. Worcestershire* (1846), 10 Jur. 595.

„ in Bankruptcy Rules, 1870, r. 144, “has not a fixed and absolute meaning, but must be construed with reference to the objects of the rule and the circumstances of the case.” *Per Lush, L.J., Ex parte Lamb* (1882), 19 Ch. D. 173.

FRANCHISE, in the County Courts Act, 1888 (51 & 52 Vict. c. 43), s. 56, includes the right or privilege granted by letters patent for a new invention. *R. v. Judge of Halifax County Court*, (1891) 1 Q. B. 793; 2 Q. B. 263; and the right to a registered trade-mark, *Bow v. Hart*, (1904) 2 K. B. 693.

FRESH EVIDENCE, in the Summary Jurisdiction (Married Women) Act, 1895 (58 & 59 Vict. c. 39), s. 7.—See *Johnson v. Johnson*, (1900) P. 19.

FRONT MAIN WALL OF THE BUILDING ON EITHER SIDE, in Public Health (Buildings in Streets) Act, 1888 (51 & 52 Vict. c. 52), s. 3. For the considerations by which it is to be ascertained, see *Att.-Gen. v. Edwards*, (1891) 1 Ch. 194.

\*FULL COMPENSATION, in sect. 308 of the Public Health Act, 1875 (38 & 39 Vict. c. 55), held to include taxed party and party-costs, but not solicitor and client costs. *Barnett v. Mayor, &c. of Eccles*, (1900) 2 Q. B. 104, 423; *Walshaw v. Mayor, &c. of Brighouse*, (1899) 2 Q. B. 287 (C. A.).

GAME, in Scotland, specified as "hares, partridges, pheasants, muir-fowls, tarmargans, heath-fowl, snipes, and quails." 13 Geo. 3, c. 54, s. 3.

" in 1 & 2 Will. 4, c. 32, s. 40, means *living* game, "although in some other parts of the statute, as, for instance, when it speaks of game at a poulterer's, the word 'game' may properly mean dead game." *Kenyon v. Hart* (1865), 6 B. & S. 255.

GAMING, in the Licensing Act, 1872 (c. 94), s. 17, is the playing of any game for money or money's worth, whether the game be or be not lawful. *Dyson v. Mason* (1889), 22 Q. B. D. 351; 5 L. Q. R. 331.

[GENERAL SESSIONS, as used in sect. 4 of 17 Geo. 2, c. 38 (Poor Law), "is another word for quarter sessions in contradistinction to a special sessions, every quarter sessions being a general sessions." *R. v. London Justices* (1812), 15 East, 633.] See Archbold, Quarter Sessions (5th ed.), p. 1; Pritchard, Quarter Sessions (2nd ed.).

GOLD MINE.—See *Att.-Gen. v. Morgan*, (1891) 1 Ch. 432, *ante*, p. 360.

" [OR SILVER, in 30 & 31 Vict. c. 90, s. 1, does not mean "pure gold or pure silver, but merely what is ordinarily called gold or silver." *Young v. Cook* (1877), 3 Ex. D. 103.]

GOOD CAUSE, in 36 & 37 Vict. c. 66 (Judicature), s. 49, includes, but is not confined to, everything for which the party is responsible connected "with the institution or conduct of the suit, and calculated to occasion unnecessary litigation and expense." *Huxley v. W. L. Ry.* (1889), 14 App. Cas. 26, at p. 33, Lord Watson; and see *Bostock v. Ramsey U. D. C.*, (1900) 2 Q. B. 616; *Sanderson v. Blyth Theatre Co.*, (1903) 2 K. B. 533 (C. A.).

GOODS, in 2 & 3 Vict. c. 71 (Metropolitan Police), s. 40, includes "dogs": *R. v. Slade* (1888), 16 Cox, Cr. Cas. 496. The word is not there synonymous with chattels, a dog not being a chattel: *R. v. Robinson* (1859), Bell, Cr. Cas. 34.

" in 19 & 20 Vict. c. 60 (Mercantile Law), s. 5, includes horses. *Young v. Giffen* (1858), 21 Dunlop (Sc.), 87.

" in the Sale of Goods Act, 1893 (56 & 57 Vict. c. 71), s. 62, "includes all chattels personal other than things in action and money, and in Scotland all corporeal moveables except money.

The term includes emblements, industrial growing crops, and things attached to and forming part of the soil which are agreed to be severed before sale or under the contract of sale."

GOODS, in sect. 2 of the County Courts Admiralty Jurisdiction Amendment Act, 1869 (32 & 33 Vict. c. 51), does not include passengers' luggage, and is used only in reference to carriage under bills of lading. *R. v. Judge of City of London Court* (1883), 12 Q. B. D. 115.

GOVERNOR OF A BRITISH POSSESSION, in the Naturalisation Act, 1870 (c. 14), s. 17, includes "any person exercising the chief authority in such possession."

„ means "any person or persons administering the government of a British possession, and includes the Governor-General of India." Extradition Act, 1870 (c. 52), s. 26.

„ as to Canada and India, means the Governor-General or any person for the time being having his power; as to any other British possession, the officer for the time being administering the government of the possession. Int. Act, 1889 (c. 63), s. 18 (6), *post*, Appendix C.

[GUARDIAN OF ANY HOSPITAL, in 13 Eliz. c. 10, s. 2, includes lay persons, and extends to secular institutions. *Governors of Magdalen Hospital v. Knotts* (1878), 8 Ch. D. 724.]

GUARDIANS, BOARD OF.—See Int. Act, 1889 (c. 63), s. 16 (1), (3), *post*, pp. 651, 652. As to Ireland, see also 1889 (c. 56), s. 9 (a). That definition is almost the same as that in Int. Act, 1889 (c. 63), s. 16 (3), save that it does not expressly include the persons appointed by the Local Government Board to execute the Irish Poor Law Acts.

HACKNEY CARRIAGE, HACKNEY COACH, in the Town Police Clauses Act, 1847, ss. 37, 38, 40—52, 54, 58, 60—67, includes an omnibus as defined by the Town Police Clauses Act, 1889 (c. 14), s. 3. *Vide* same Act, s. 4 (1). *Hawkins v. Edwards*, (1901) 2 K. B. 169; *Yorkshire (Woollen District) Electric Tramways Co. v. Ellis*, (1905) 1 K. B. 396.

„ in 51 & 52 Vict. c. 7 (Inland Revenue), s. 4, includes an omnibus running along a fixed route. *Hickman v. Birch* (1890), 24 Q. B. D. 172.

HARSH AND UNCONSCIONABLE, in sect. 1 of the Money Lenders Act, 1900 (63 & 64 Vict. c. 51). *Samuel v. Neubold*, (1906) App. Cas. 461; *Carringtons Limited v. Smith*, (1906) 1 K. B. 79; *Bonnard v. Dott*, (1906) 1 Ch. 740.

HEAR (TO), in the Public Worship Regulation Act, 1874 (37 & 38 Vict. c. 85), s. 9, in the expression "requires the judge to hear the matter of the representation," means to "hear and finally determine the whole matter." Per Lord Selborne in *Green v. Lord Penzance* (1881), 6 App. Cas. 669.

HEARING UPON THE MERITS, in sect. 44 of the Offences against the Person Act, 1861 (24 & 25 Vict. c. 100), necessary to give justices jurisdiction to give a certificate of dismissal of a summons for assault, does not include a hearing of the defendant's account of the facts after the plaintiff has given notice that he does not intend to proceed upon the summons. *Reed v. Nutt* (1890), 24 Q. B. D. 669, Lords Coleridge and Esher. The words "upon the merits" inserted in the Act of 1861 appear to limit the jurisdiction which justices had been decided to have under the earlier Act, 9 Geo. 4, c. 31, s. 7. See *Tunncliffe v. Tedd* (1848), 5 C. B. 553, and *Vaughton v. Bradshaw* (1860), 9 C. B. N. S. 103.

HELD, in 30 & 31 Vict. c. 131, s. 40, has no specific technical meaning, but simply means "that the contributory has had his name upon the register as the holder of the shares for the period in question." *Re Wala Company* (1883), 21 Ch. D. 857, Chitty, J.

„ WITH, in Lands Clauses Act, 1845 (8 & 9 Vict. c. 18), ss. 49, 63, applies to lands not immediately contiguous to the lands compulsorily taken. *Cowper Essex v. Acton L. B.* (1889), 14 App. Cas. 167. "They are not words of art. They are ordinary language, and must be understood with reference to their object." Lord Bramwell, *loc. cit.* 168.

HEREDITAMENTS, in 38 Geo. 3, c. 5 (Land Tax), s. 4, includes a railway tunnel, which is an interest in land, and not a mere easement through it. *Met. Rail. Co. v. Fowler*, (1892) 1 Q. B. 165; (1893) App. Cas. 416; and an underground sanitary convenience: *Westminster Corporation v. Johnson*, (1904) 2 K. B. 737 (C. A.).

„ of any tenure, in the Lands Clauses Act, 1845 (8 & 9 Vict. c. 18), s. 3, includes incorporeal hereditaments. *G. W. R. v. Swindon Rail. Co.* (1884), 9 App. Cas. 787, 809.

„ in sect. 60 and Sched. A, r. 1, of the Income Tax Act, 1842, includes a sewer vested in and under the control of a local authority. *Ystradyfodwg, &c. Sewerage Board v. Bensted*, (1906) 1 K. B. 294, Walton, J.

„ TITLE TO, in County Courts Act, 1888 (c. 43), s. 56, is defined as including *land* and a leasehold interest therein. *Tomkins v. Jones* (1889), 22 Q. B. D. 599. The word is not used as describing the *quantum* of interest, but as describing the subject-matter itself—viz., the land. Bowen, L.J., 602. He referred to sects. 59, 60, 61.

[HEREINBEFORE CONTAINED, in 30 & 31 Vict. c. 127 (Railway Companies), s. 23, is ambiguous, and may mean "before contained in this Act," or "before contained in this section"; therefore, which of the two meanings is the proper one must be discovered "from the context and the general scheme of the Act." *Re Cambrian Rail. Co.* (1868), 3 Ch. App. 297.]

HIGH COURT.—See Int. Act, 1889, s. 13 (3), *post*, Appendix C.

HIGH-WATER MARK.—See *Smart v. Suva Town Board*, (1893) App. Cas. 301.

„ MARK, TRINITY, is a mark on the east side of the Hermitage entrance to the London Docks (fixed under 39 & 40 Geo. 3, c. xlvii. s. 5), and is 12 feet 6 inches above the Ordnance datum, which is taken from the mean level of the tides at Liverpool. See London Building Act, 1894 (57 & 58 Vict. c. cxxiii.), s. 122.

[HOSPITAL, in sect. 25 of the Land Tax Act, 1798 (38 Geo. 3, c. 5), includes not only hospitals in the legal sense of the word (sect. 3), but also hospitals in the popular sense of the word. *Colchester (Lord) v. Kewney* (1876), L. R. 1 Ex. 377.]

HOSPITAL [OR CHARITY SCHOOL], in the House Tax Acts, 1808 (48 Geo. 3, c. 55, Sch. B.) and 1851 (14 & 15 Vict. c. 36).—The character of such a place for the purpose of exemption from inhabited house duty depends on the character of and uses of the school or other buildings at the time of the assessment, and not upon their character at the time of the passing of the Acts under which the taxation is authorised to be made or the exemption is claimed. *Governors of Charterhouse v. Lamarque* (1890), 25 Q. B. D. 121, and see *Charterhouse School v. Gayler*, (1896) 1 Q. B. 437; *Cause v. Nottingham Hospital Committee*, (1891) 1 Q. B. 585; *Musgrave v. Dundee Royal Lunatic Asylum* (1895), 22 Rettie (Sc.), 784. See also *Ormskirk Union v. Chorlton Union*, (1903) 2 K. B. 498 (C. A.).

HOUSE imputes a place of residence, but is a wider term than dwelling-house. *Lewin v. End*, (1906) App. Cas. 299. As to whether a block of flats is a house, see *Kimber v. Admans*, (1900) 1 Ch. 412; *Rogers v. Hosegood*, (1900) 2 Ch. 389 (C. A.).

„ [in the Lands Clauses Act, 1845 (8 & 9 Vict. c. 18), s. 92, means “all which would with a reasonable latitude of construction pass under the description of ‘house’ or ‘messuage’ in a deed or will.” *Steele v. Midland Rail.* (1866), 1 Ch. App. 275.] Cf. *Barnes v. Southsea Rail. Co.* (1884), 27 Ch. D. 536, 542.

„ in the House Tax Acts. See *Grant v. Langston*, (1900) App. Cas. 383.

„ in criminal statutes, means “a permanent building in which the tenant, or the owner and his family, dwells or lives. It must not be a mere tent or booth, as in a market; it must be a permanent building.” In *Chapman v. Royal Bank* (1881), 7 Q. B. D. 140, Huddleston, B.

„ in Metrop. Man. Act, 1855, s. 105, includes all land upon which there is a building which is, or may be, used for the habitation of man. *Wright v. Ingle* (1885), 16 Q. B. D. 390, Esher, M.R. See *Hornsey District Council v. Smith* (1897), 1 Ch. 843 (C. A.). And see DWELLING-HOUSE.

[ILL, in sect. 17 of the Indictable Offences Act, 1848 (11 & 12 Vict. c. 42), may include the case of a woman who is pregnant: *R. v. Wellings* (1878), 3 Q. B. D. 426], or who has been recently confined. *R. v. Marsella* (1901), 17 T. L. R. 164.

ILLEGAL, by being in 'restraint of trade. See *Swaine v. Wilson* (1889), 24 Q. B. D. 257; *Warburton v. Huddersfield Industrial Society*, (1892) 1 Q. B. 817; *Chamberlain's Wharf, Ltd. v. Smith*, (1900) 2 Ch. 605 (C. A.); *Howden v. Yorkshire Miners' Association*, (1903) 1 K. B. 308 (C. A.).

„ DEALING, in sect. 17 of the Licensing Act, 1874 (37 & 38 Vict. c. 49), includes buying as well as selling intoxicants. *M'Kenzie v. Day*, (1893) 1 Q. B. 289.

IMMEDIATE APPROACH, in 8 & 9 Vict. c. 20, s. 46, does not apply to that part of a highway which has been lowered for the purpose of carrying a railway bridge over it. *London & N. W. Rail. Co. v. Skerton* (1864), 5 B. & S. 559; see also Irish cases cited in judgment.

[IMMEDIATELY AFTER, in sect. 20 of the Juries Act, 1825 (6 Geo. 4, c. 50), means "within a reasonable time." *Christie v. Richardson* (1842), 10 M. & W. 688; and see *Grace v. Clinch* (1843), 4 Q. B. 609; *Toms v. Wilson* (1863), 4 B. & S. 453; also see *Forthwith*.]

IMMORAL ACTS, CONDUCT, AND HABITS, in the Clergy Discipline Act, 1892, considered. *Beneficed Clerk v. Lee*, (1896) App. Cas. 226.

IMPLIED CONDITION, in 48 & 49 Vict. c. 62, s. 12 (Housing of the Working Classes), does not mean a mere warranty. *Walker v. Hobbs* (1889), 23 Q. B. D. 458. See now 53 & 54 Vict. c. 70, s. 75; 3 Edw. 7, c. 39, s. 12.

IMPOSITIONS.—See *Foulger v. Arding*, (1901) 2 K. B. 151; *Goldstein v. Hollingworth*, (1904) 2 K. B. 578; *Re Warriner*, (1903) 2 Ch. 367; *Morris v. Beal*, (1904) 2 K. B. 585.

IMPROVEMENTS.—See *Re Mundy's Estates*, (1891) 1 Ch. 399; *Re Byng's Estates*, (1892) 2 Ch. 219.

INCLUDE, in 24 & 25 Vict. c. 99 (Coinage Offences), s. 1, "is not identical with, or put for," the word "mean." Per Lord Coleridge, *R. v. Hermann* (1879), 4 Q. B. D. 288.

INCOMBUSTIBLE MATERIAL, in 18 & 19 Vict. c. 122 (Metropolitan Building Act), s. 19, sub-s. 1, was held to mean wholly incombustible, and not partly combustible and partly incombustible, however safe in fact as a roofing the material may be. *Payne v. Wright*, (1892) 1 Q. B. 104. See now sect. 61 of the London Building Act, 1894 (57 & 58 Vict. c. cxxiii.).

INCOME, in the New Brunswick Act (31 Vict. c. 36), s. 4, must be construed "in its natural and commonly accepted sense as the balance of gain over loss." *Lawless v. Sullivan* (1881), 6 App. Cas. 384. Cf. *Commissioners of Taxes v. Kirk*, (1900) App. Cas. 588, decided on the New South Wales Income Tax Act.

„ in the British Columbia Assessment Act, 1897. See *Att.-Gen. of B. C. v. Ostrum*, (1904) App. Cas. 144.

INCOME, in sect. 53 of the Bankruptcy Act, 1883, is *eiusdem generis* with "salary," and does not include prospective personal earnings. *Ex parte Benwell* (1884), 14 Q. B. D. 301; *Ex parte Lloyd*, (1891) 2 Q. B. 231; *Ex parte Shine*, (1892) 1 Q. B. 522; *Ex parte Roberts*, (1900) 1 Q. B. 122.

„ in the Income Tax Acts, does not include the advantage of occupying a house *virtute officii*, unless the occupant has power to let the house. *Tennant v. Smith*, (1892) App. Cas. 150.

[INCOMPLETENESS, in sect. 6 of the Railway Regulation Act, 1842 (5 & 6 Vict. c. 55), is not confined merely to what is "not finished," but may be used as to "anything imperfect or incomplete." *Att.-Gen. v. Great Western Rail. Co.* (1876), 4 Ch. D. 739.]

INDIA, BRITISH.—See Int. Act, 1889 (c. 63), s. 18 (4), (5), *post*, Appendix C.

INDICTMENT, in sect. 6 of the Offences against the Person Act, 1861 (24 & 25 Vict. c. 100), applies to coroners' inquisitions. *R. v. Ingham* (1864), 5 B. & S. 272.

„ in 26 & 27 Vict. c. 29 (Corrupt Practices), s. 7, does not include an *ex officio* information filed by the Attorney-General. *R. v. Stator* (1881), 8 Q. B. D. 267. *Vide ante*, p. 156.

INDORSE, held to be equivalent to "sign" in County Court Rules, 1888. *Vide R. v. Cowper* (1889), 24 Q. B. D. 62; see Int. Act, 1889, s. 20, *post*, Appendix C.

INFORMATION, in 11 & 12 Vict. c. 43, was held not to be substantially different from "complaint": *Blake v. Beech* (1876), 1 Ex. D. 320; *R. v. Paget* (1881), 8 Q. B. D. at p. 155 (Field, J.); but it is usually defined as applying to charges of a criminal character, which may end in a conviction, and complaint and proceedings before a magistrate which may end in an order to pay money or to do some act.

NOTE.—In 11 & 12 Vict. c. 42, the term "complaint" cannot refer to a civil proceeding.

INHABITANT [in 11 Geo. 3, c. 29, is held to mean a "resiant occupier." *Downe v. Martyr* (1828), 8 B. & C. 69; *R. v. Nicholson* (1810), 12 East, 342]. In statutes relating to rates it means rateable occupier. In statutes relating to settlement it means resident. *Wilson v. Churchwardens of Sunderland* (1864), 34 L. J. M. C. 90, Erle, C.J.; and see Ryde on Rating (2nd ed.).

„ [synonymous with "occupier." *R. v. Tunstead* (1790), 3 T. R. 523; *Att.-Gen. v. Parker* (1747), 3 Atk. 576. In 2 Inst. 702, Lord Coke says that under 22 Hen. 8, c. 5, the word "inhabitants" includes those who occupy lands in the county though they do not reside there. See also *R. v. Hall* (1822), 1 B. & C. 136; *R. v. Mitchell* (1809), 10 East, 511.

INHABITANT OCCUPIER.—See *Lewin v. End*, (1906) App. Cas. 299; *Kent v. Fittall*, (1906) 1 K. B. 60 (C. A.).

**INHABITED DWELLING-HOUSE**, in the House Tax Act, 1851 (14 & 15 Vict. c. 36), s. 1, does not apply to a house only occupied during the day and where no one sleeps at night. *Per* Kelly, C.B., in *Riley v. Read* (1879), 4 Ex. D. 102. It includes a distinct flat or tenement in a large building separately let for residence. *Att.-Gen. v. Westminster Mutual Tontine Chambers Association* (1876), 1 Ex. D. 469. See also *Lord Walsingham v. Styles* (1894), 3 Tax. Cas. 247; *Hoddinot v. Home and Colonial Stores*, (1896) 1 Q. B. 169. It includes rooms within the curtilage of a dwelling-house used exclusively as offices by the occupier of the dwelling-house, but not so divided or severed as to be capable of being a distinct property or a distinct subject of lease. *Nicholls v. Malim*, (1906) 1 K. B. 272; *Grant v. Langston*, (1900) App. Cas. 383.

**INJURIOUSLY AFFECTED**.—Lands Clauses Act, 1845 (8 & 9 Vict. c. 18), s. 68; Railways Clauses Act, 1845 (8 & 9 Vict. c. 20), ss. 6, 16, *in pari materid.* See *Cowper Essex v. Acton L. B.* (1889), 14 App. Cas. 153; *Re L. T. & S. Ry. Co.* (1889), 24 Q. B. D. 44; Cripps on Compensation (5th ed.).

**INSTRUMENT**, in the Trustee Act, 1893 (56 & 57 Vict. c. 53), s. 50, includes “Act of Parliament,” which is defined, *post*, Appx. C.

**INTENDED TO BE DONE**, in sect. 204 of the Public Health Act, 1875 (38 & 39 Vict. c. 55), means, not intended to be done in the future, but done in supposed conformity with the provisions of the Act. *Chapman v. Auckland Guardians* (1889), 23 Q. B. D. 303 (Bowen, L.J.). See similar words in sect. 1 of the Public Authorities Protection Act, 1893 (56 & 57 Vict. c. 61).

**INTEREST IN LAND**, in the Mortmain Acts (9 Geo. 2, c. 36, and 51 & 52 Vict. c. 42), includes bonds issued by harbour trustees, and secured on “rates, tolls, and rents”: *In re David* (1890), 43 Ch. D. 27; and Metropolitan Consolidated Stock: *Re Crossley*, (1897) 1 Ch. 928; but not a charge on a borough fund: *Re Thompson* (1890), 45 Ch. D. 161.

„ (2) In the Lands Clauses Acts. See *Re Masters and G. W. R.*, (1900) 2 Q. B. 677; (1901) 2 K. B. 84 (C. A.); *Long Eaton Recreation Grounds Co. v. Midland Rail. Co.*, (1902) 2 K. B. 574 (C. A.).

**INTERESTED in a contract** within the meaning of the City of London Sewers Acts. See *City of London Electric Lighting Co., Ltd. v. Mayor, &c. of London*, (1901) 1 Ch. 602 (C. A.).

**INTERRUPTION**, in sects. 2, 3 of the Prescription Act, 1832 (2 & 3 Will. 4, c. 71), does not mean “cessation,” but such interruption as is mentioned in sect. 4 of the Act—*i.e.* an adverse obstruction, and not mere discontinuance of user. *Hollins v. Verney* (1884), 13 Q. B. D. 304, at p. 307 (Lindley, L.J.); *Smith v. Baxter*, (1900) 2 Ch. 138 (Stirling, J.).

**INVENTED WORD**, in the Patents Act, 1883 (46 & 47 Vict. c. 57), s. 64, includes a descriptive word—*i.e.* a word referring to the quality



or nature of the article to which it is applied. *Eastman Photographic Co. v. Comptroller of Patents*, (1898) App. Cas. 571; *Linotype Co.'s Trade Mark*, (1900) 2 Ch. 238.

INVESTMENT, in 16 & 17 Vict. c. 34 (Income Tax), ss. 1, 2. *Vide Clerical, &c. Assurance Co. v. Carter* (1889), 22 Q. B. D. 444.

IRISH VALUATION ACTS.—See Int. Act, 1889, s. 24, *post*, Appendix C.

ISSUE OF BANK-NOTES, in sect. 11 of the Bank Charter Act, 1844 (7 & 8 Vict. c. 32), means “the delivery of the notes to the persons who are willing to receive them in exchange for value in gold, bills, or otherwise; the person who delivers them being prepared to take them up when they are presented for payment.” *Att.-Gen. v. Birkbeck* (1884), 12 Q. B. D. 611; *cf. Prescott & Co. v. Bank of England*, (1894) 1 Q. B. 351 (C. A.).

„ OF CHEQUES, within sect. 2 of the Bills of Exchange Act, 1882 (45 & 46 Vict. c. 61). *Clutton v. Attenborough*, (1896) App. Cas. 90.

„ [OF SHARES, in the Companies Act, 1867 (30 & 31 Vict. c. 131), s. 25, “must be taken as meaning something distinct from allotment, and as importing that some subsequent act has been done whereby the title of the allottee becomes complete.” *Clarke's case* (1878), 8 Ch. D. 638.]

„ OF VALUABLE SECURITIES, within the Stamp Act, 1891 (54 & 55 Vict. c. 39), s. 82. See *Lord Revelstoke v. Inland Revenue Commissioners*, (1898) App. Cas. 565.

JOINT STOCK COMPANY.—See *Re Russell Institution and Baghino*, (1898) 2 Ch. 72.

JUDGMENT.—“In Acts of Parliament there is a well-known distinction between a ‘judgment’ and an ‘order.’” *Ex parte Chinery* (1884), 12 Q. B. D. 345; *In re Binstead*, (1893) 1 Q. B. 199, 203; and see Ann. Pr. 1907, p. 561.

„ [in sect. 1 of 1 Will. 4, c. 21, was used in its technical sense—*i.e.* a judgment on pleadings, not a mere decision of a Court upon a rule. *Ex parte Everton Overseers* (1871), L. R. 6 C. P. 246.]

„ in 1 & 2 Vict. c. 110 (Judgments), s. 17, means such judgments as were then (1838) known—*i.e.* those of the superior Courts of common law as then (1838) existed—and does not include the judgments of County Courts as reconstructed by the County Courts Act of 1846 (9 & 10 Vict. c. 95). *R. v. County Court Judge of Essex* (1887), 18 Q. B. D. 704.

„ in sect. 47 of the Judicature Act, 1873 (36 & 37 Vict. c. 66), means any decision, and not merely final judgment, in criminal cases. *R. v. Foote* (1883), 10 Q. B. D. 380, Jessel, M.R.

„ DEBTOR, in sects. 14, 15 of the Judgments Act, 1838 (1 & 2 Vict. c. 110), does not include the personal representatives of a deceased judgment debtor. *Stewart v. Rhodes*, (1900) 1 Ch. 386 (C. A.).

JUDGMENT OBTAINED, in the Public Authorities Protection Act, 1893 (56 & 57 Vict. c. 61), includes a consent order for dismissal of an action. *Shaw v. Hertfordshire C. C.*, (1899) 2 Q. B. 282 (C. A.); and see *Smith v. Northleach U. D. C.*, (1902) 1 Ch. 197.

JURISDICTION.—(1) The right to adjudicate on a given point. (2) The local extent within which the High Court can and does exercise the right when ascertained. See 6 Law Quarterly Review, 295; R. S. C. 1883, Ord. XI. r. 1; Ann. Pr. 1907, p. 66.

JUST.—“Shall have the power, if he shall think just, to order a new trial,” in the County Courts Act, 1888 (51 & 52 Vict. c. 43), s. 93. These words do not give a County Court judge an absolute power of granting new trials. His power under the section is subject to the rules and limitations as to the granting of new trials which are binding upon the High Court, the Court of Appeal, and the House of Lords. *Murtagh v. Barry* (1890), 44 Ch. D. 632, Coleridge, C.J. The crucial word in the phrase is “just,” which imparts a judicial, and not an absolute power.

JUST AND EQUITABLE, in sect. 79 of the Companies Act, 1862 (25 & 26 Vict. c. 89). See *Re Alfred Melson & Co., Ltd.*, (1906) 1 Ch. 841.

JUSTICE.—“Best calculated to answer the ends of justice,” in sect. 8 of the Lancaster Chancery Act, 1854 (17 & 18 Vict. c. 82), means to attain what is right and proper in the circumstances. *Cooke v. Smith* (1890), 44 Ch. D. 72 (C. A.).

KEEP implies habitual, and not mere occasional, use for the purpose prohibited by a statute. *R. v. Strugnell* (1866), L. R. 1 Q. B. 93.

„ in 6 & 7 Vict. c. 68, s. 2 (Theatres), is not synonymous with “have,” but does not imply habitual use. Keeping a house for one day for unlicensed stage plays is a contravention of the Act. *Shelley v. Bethell* (1884), 12 Q. B. D. 11, 15.

LABOURER [in sect. 1 of the Sunday Observance Act, 1677 (29 Chas. 2, c. 7), does not include a farmer who works for himself, but, *semble*, it includes an agricultural labourer. *R. v. Cleworth* (1864), 4 B. & S. 927]. It does not include a barber. *Palmer v. Snow*, (1900) 1 Q. B. 725.

„ in Employers and Workmen Act, 1875 (38 & 39 Vict. c. 90), does not include an omnibus conductor or driver. *Morgan v. London General Omnibus Co.* (1883), 12 Q. B. D. 206.

LABOURING CLASS.—See *Working class*.

LAND.—[In all Acts passed after 1850, unless the contrary intention appears in the Act, the expression “land” includes messuages, tenements, and hereditaments, corporeal or incorporeal, houses and buildings, of any tenure.] Int. Act, 1889 (52 & 53 Vict. c. 63), s. 3, *post*, Appendix C.; *Re Clutterbuck*, (1901) 2 Ch. 285.

LAND in the Lighting and Watching Act, 1833 (3 & 4 Will. 4, c. 90), does not include coal mines. *Thoresby v. Briercliffe-cum-Entwistle*, (1895) App. Cas. 32.

„ in the Conveyancing Act, 1881 (44 & 45 Vict. c. 41), s. 2 (ii.), and Settled Land Act, 1882, c. 38. See 5 Law Quarterly Review, 376. *Brown v. Peto*, (1900) 1 Q. B. 346.

„ in the Mortmain, &c. Act, 1891 (54 & 55 Vict. c. 73). See *Re Wilkinson*, (1902) 1 Ch. 841; *Re Ryland*, (1903) 1 Ch. 467.

„ See *Hereditament*; *Owner of land*.

„ CHARGES, in the Land Charges Act, 1888 (51 & 52 Vict. c. 51), did not include expenses incurred by local authorities under the Public Health Acts, although they may in certain events become charges on property. *R. v. Vice-Registrar of Land Registry* (1890), 24 Q. B. D. 178; but see 63 & 64 Vict. c. 26.

„ INTEREST IN, in cases of mortgage. See *Taylor v. London and County Banking Co.*, (1901) 2 Ch. 231.

“LAND COVERED WITH WATER,” in sect. 211 of the Public Health Act, 1875, held to include artificial reservoirs. See *Southwark and Vauxhall W. W. Co. v. Hampton U. D. C.*, (1899) 1 Q. B. 273 (C. A.); (1900) App. Cas. 3.

LAND CLAUSES ACTS.—See Int. Act, 1889, s. 23, *post*, Appendix C.

[LAW OF PARLIAMENT, in 2 & 3 Will. 4, c. 45, s. 36 (Representation of the People), meant the law as administered at the time of the passing of that Act by Committees of the House of Commons. *Harrison v. Carter* (1876), 2 C. P. D. 35.]

LEGACY DUTY.—A tax on property falling on the successors of a deceased person, leviable when the enjoyment accrues. *Blackwood v. R.* (1882), 8 App. Cas. 82, 90.

LEGAL NOMINEE in Friendly Societies Act, 1896 (59 & 60 Vict. c. 25). See *Re Redman*, (1901) 2 Ch. 471.

LEGISLATURE.—See Int. Act, 1889, s. 18 (7), *post*, Appendix C.

LIABILITY, “incapable of being fairly estimated,” in the Bankruptcy Act, 1883, s. 37. See *Hardy v. Fothergill* (1888), 13 App. Cas. 351.

„ in Bankruptcy Act, 1883 (46 & 47 Vict. c. 52), s. 37, includes liability under a covenant to pay money out of the estate of the covenantor six months after his death. *Barnett v. King*, (1891) 1 Ch. 4; and *cf. Wolmershausen v. Gullick*, (1893) 2 Ch. 514; *Ellis v. Pond*, (1898) 1 Q. B. 426, 454.

„ to COSTS, construed in *Stubbs v. Director of Public Prosecutions* (1890), 24 Q. B. D. 577, with reference to the Director of Public Prosecutions and the Vexatious Indictments Act, 1859 (22 & 23 Vict. c. 17).

LICENSED HAWKER, in sect. 13 of the Markets and Fairs Clauses Act, 1847 (10 & 11 Vict. c. 14). *Llandudno U. D. C. v. Hughes*, (1900) 1 Q. B. 472.

LIFEBOAT SERVICE, in the Removal of Wrecks Acts, 1877 and 1889, "means the saving or attempted saving of vessels, or of life or property on board vessels, wrecked, or aground, or sunk, or in danger of being wrecked, or getting aground, or sinking." 52 & 53 Vict. c. 5, s. 3.

LIGHT RAILWAY (IRELAND), in 52 & 53 Vict. c. 66 (by s. 11), "includes tramway as that word is used in the Tramways (Ireland) Acts."

LIMITS OF PORT. See PORT.

LITERARY AND ARTISTIC WORK, in the International Copyright Act, 1886, "unless the context otherwise requires, means every book, print, lithograph, article of sculpture, dramatic piece, musical composition, painting, drawing, photograph, and other work of literature and art to which the Copyright Acts or the International Copyright Acts, as the case requires, extend." 49 & 50 Vict. c. 33, s. 11. As to what is literary composition, see *Chilton v. Progress Publishing Co.*, (1895) 2 Ch. 29; *Walter v. Lane*, (1900) App. Cas. 539; *Exchange Telegraph Co. v. Gregory*, (1896) 1 Q. B. 147.

LITERARY OR SCIENTIFIC INSTITUTION, in the Income Tax Act, 1842 (5 & 6 Vict. c. 35), s. 61. See *Mayor, &c. of Manchester v. McAdam*, (1896) App. Cas. 500.

LOCAL AUTHORITY in the Infectious Diseases Act, 1889 (c. 72), s. 16, means each of the following authorities:—

(a) An urban or rural sanitary authority in England within the meaning of the Public Health Acts.

(b) The port sanitary authority of any port sanitary district in England.

LOCAL FINANCIAL YEAR.—See *ante*, p. 151.

LOCAL GOVERNMENT REGISTER OF ELECTORS.—See Int. Act, 1889, s. 17 (3), *post*, Appendix C.

"LOCALLY SITUATE OUT OF THE UNITED KINGDOM," in the Stamp Act, 1891 (54 & 55 Vict. c. 39, s. 59). See *Muller & Co.'s Margarine, Ltd. v. Inland Revenue Commissioners*, (1900) 1 Q. B. 310; (1901) App. Cas. 217.

LODGER, under the Rating Acts, means every person occupying part of a house who is not a householder. *Stamper v. Sunderland Overseers* (1868), L. R. 3 C. P. 388.

„ under the Franchise Acts, means a person residing in the house of another over which the latter exercises some control, such as by having a servant in the house to look after it for him. *Bradley v. Baylis* (1881), 8 Q. B. D. 241, Cotton, L.J.; but the fact that the landlord lives on the premises is not conclusive that the persons occupying under him are lodgers. *Kent v. Fittall*, (1906) 1 K. B. 60 (C. A.).

**LODGER.**—In the Lodgers' Goods Protection Act, 1871 (34 & 35 Vict. c. 79), ss. 1, 2, means one who lives and sleeps on the premises in question, and does not include persons who occupy rooms for business purposes in the daytime. *Heawood v. Bone* (1884), 13 Q. B. D. 179.

**LOOSE**, in 2 & 3 Vict. c. 47, s. 54 (Metropolitan Police), in the expression "every person who shall turn loose any horse or cattle," does not mean "physically loose," as the enactment only requires that the cattle shall be under the care and control of their owner. *Sherborne v. Wells* (1862), 3 B. & S. 786.

**LORD CHANCELLOR.**—See Int. Act, 1889, s. 12 (1), *post*, Appendix C.

**LORD LIEUTENANT.**—See Int. Act, 1889 (c. 63), s. 12 (9), *post*, Appx. C.

"**Loss**" of a ship in sect. 158 of the Merchant Shipping Act, 1894 (57 & 58 Vict. c. 60), includes capture followed by destruction by a foreign belligerent. *Sivewright v. Allen*, (1906) 2 K. B. 81. *Cf. Austin Friars Steamship Co. v. Frack*, (1905) 2 K. B. 315; and the loss arose at the date of capture.

**LOTTERY**, in sect. 2 of 42 Geo. 3, c. 119, means "a distribution of prizes by lot or chance." *Taylor v. Smetten* (1883), 11 Q. B. D. 207, 211, Hawkins, J. *Cf. Barclay v. Pearson*, (1893) 2 Ch. 154; *Stoddart v. Sagar*, (1895) 2 Q. B. 474.

**LUNATIC**, in 8 & 9 Vict. c. 100, s. 44, included "every person whose mind is so affected by disease that it is necessary for his own good to put him under restraint." *R. v. Bishop* (1880), 5 Q. B. D. 259. This section is now embodied in sect. 315 of the Lunacy Act, 1890 (53 & 54 Vict. c. 5).

**MAINTENANCE OF A MAIN ROAD**, within sect. 13 of the Highways and Locomotives Amendment Act, 1878 (41 & 42 Vict. c. 77), includes the removal of snow when it makes the road impassable. *Guardians of Amesbury v. Justices of Wilts* (1883), 10 Q. B. D. 480.

"**OF A PRISONER**, in sects. 4, 57, of the Prison Act, 1877 (40 & 41 Vict. c. 21), includes the expenses of inquiring into the mental state of a prisoner who becomes insane, and of removing him to a county lunatic asylum, and maintaining him there during the currency of his sentence. *Mews v. R.* (1882), 8 App. Cas. 339.

**MAKE A CONTRACT**, in the Stamp Act, 1891 (54 & 55 Vict. c. 39), s. 59. See *Muller & Co.'s Margarine, Ltd. v. Inland Revenue Commissioners*, (1900) 1 Q. B. 310.

**MAKE A VALUABLE SECURITY**, in 24 & 25 Vict. c. 96, s. 90, inserted to include instruments which were not valuable securities prior to delivery. *R. v. Gordon* (1889), 23 Q. B. D. 359 (C. C. R.); *cf. Revelstoke v. Inland Revenue Commissioners*, (1898) App. Cas. 565.

"**MAKE USE OF**" an invention in the Patents Act, 1883 (c. 57). See *British Motor Syndicate Co. v. Taylor*, (1900) 1 Ch. 577.

**MALICIOUS**, in sect. 51 of the Malicious Damage Act, 1861 (24 & 25 Vict. c. 97), means "where a person wilfully does an act injurious to another without lawful excuse." *R. v. Pembrilton* (1874), L. R. 2 C. C. R. 122, Blackburn, J.; and see *R. v. Clemens*, (1898) 1 Q. B. 556; *Re Borrowes* (1900), 2 Ir. Rep. 593.

**MANUAL LABOUR**, in Employers and Workmen Act, 1875 (38 & 39 Vict. c. 90), s. 10, does not mean the mere user of the hands in matters incidental to the employment, but the user of the hands as the real and substantial part of the employment. *Bound v. Lawrence*, (1892) 1 Q. B. 226; *cf. Morgan v. London General Omnibus Co.* (1884), 12 Q. B. D. 201; 13 Q. B. D. 832.

**MARKETABLE SECURITY**, in the Stamp Act, 1891 (54 & 55 Vict. c. 39), Sched. 1. See *Knights Deep, Ltd. v. Inland Revenue Commissioners*, (1900) 1 Q. B. 217; *Speyer Brothers v. Same*, (1906) 1 K. B. 318; *Mount Lyell Mining & Rail. Co. v. Same*, (1905) 1 K. B. 161.

**MARRIAGE SETTLEMENT**, in sect. 4 of the Bills of Sale Act, 1878 (41 & 42 Vict. c. 31), includes an informal memorandum of agreement for a marriage settlement. *Wenman v. Lyon*, (1891) 1 Q. B. 634.

[**MARRY**, in sect. 57 of the Offences against the Person Act, 1861 (24 & 25 Vict. c. 100), means "go through the form of marriage." The statute is equally contravened whether the second marriage is or is not valid. *R. v. Allen* (1872), L. R. 1 C. C. R. 367.] *Vide ante*, p. 157.

**MASCULINE**.—*Vide ante*, p. 149. As to Irish criminal statutes, *vide* 9 Geo. 4, c. 54, s. 35.

**MAY**.—*Vide ante*, p. 152.

- „ in rules of Court, has been held to mean may or may not—to give a discretion which is called a judicial discretion, but which still is a discretion. *Att.-Gen. v. Emerson* (1889), 24 Q. B. D. 58.
- „ = shall in Public Health Act, 1875, s. 211. *R. v. Barclay* (1881), 8 Q. B. D. 306, 486.
- „ = must in Arbitration Act, 1889 (52 & 53 Vict. c. 49), s. 5. *Re Eyre and Corporation of Leicester*, (1892) 1 Q. B. 136.
- „ Cotton, L.J., in *Nichols v. Baker* (1890), 44 Ch. D. at p. 270: "I think that great misconception is caused by saying that in some cases 'may' means must (or shall). It never can mean 'must' as long as the English language retains its meaning; but it gives a power, and then it may be a question in what cases, where a judge has a power given him by the word 'may,' it becomes his duty to exercise it"—i.e., whether the discretion is judicial or absolute, fettered or unfettered.
- „ in the Companies Act, 1862 (25 & 26 Vict. c. 89), s. 69, does not give an absolute, but only a judicial discretion. And its exercise is regulated by judicial decisions and the *cursus curiæ*—i.e., the

fetters which the Courts have imposed on themselves. *Accidental Marine Co. v. Mercati* (1866), L.R. 3 Eq. 200; *Northampton Coal and Iron Co. v. Midland Waggon Co.* (1878), 7 Ch. D. 500; *City of Moscow Gas Co. v. International Financial Society* (1872), 7 Ch. App. 225; *Western Canada Oil, &c. Co. v. Walker* (1875), 10 Ch. App. 628 (*contra*); *Pure Spirit Co. v. Fowler* (1890), 25 Q. B. D. 235.

MEASURE.—*Vide Mile.*

MEASURING INSTRUMENT, in the Weights and Measures Act, 1889 (c. 21), s. 35, unless the context otherwise requires, includes “any instrument for the measurement of length, capacity, volume, temperature, pressure, or gravity, or for the measurement or determination of electrical quantities.”

MEDICAL ASSISTANCE, in the Franchise Acts. *Kirkhouse v. Blakeway*, (1902) 1 K. B. 306.

[MEETING, in 32 & 33 Vict. c. 19, s. 4 (Stannaries), does not apply to acts done by a single person, as the *primâ facie* meaning of the word is “the coming together of more than one person.” *Sharp v. Dawes* (1876), 2 Q. B. D. 29.]

MEMBER OF A COMPANY, in the Companies Act, 1862 (25 & 26 Vict. c. 89, s. 23). See *Allen v. Gold Reefs of W. Africa, Ltd.*, (1900) 1 Ch. 656; *Punt v. Symons & Co., Ltd.*, (1903) 2 Ch. 506.

„ OF AN INDUSTRIAL SOCIETY.—See *Gwendolen Freehold Land Society v. Wicks*, (1904) 2 K. B. 622.

MERCANTILE AGENT, in Factors Acts.—See *Inglis v. Robertson*, (1898) App. Cas. 616; *Cahn v. Pockett's Bristol Channel Steam-Packet Co.*, (1899) 1 Q. B. 643.

METROPOLITAN POLICE FUND, in 49 & 50 Vict. c. 22 (Met. Pol. Act, 1886), s. 7, “means the rates, contributions, and funds for the time being applicable for defraying the expenses of the Metropolitan Police Force.”

MILE.—[When a distance is mentioned in an Act] passed prior to 1890, [without defining how it is to be measured (*a*), it is to be measured “as the crow flies,” and not by the nearest mode of practicable access. Formerly it was considered that miles should be computed according to the English manner, allowing 5280 feet or 1760 yards to each mile, and that the same shall be reckoned, not by straight lines as a bird or arrow may fly, but according to the nearest and most usual way (*b*). This method of measurement was first called in question by Parke, J., in *Leigh v. Hind* (1829), 9 B. & C. 779 (which, however, was a case upon the construction of a contract, and not of a statute), and his opinion was followed by the Queen's Bench in *R. v. Saffron Walden* (1846), 9 Q. B. 79, where Patteson, J., said:

(*a*) *Vide ante*, p. 151, and 6 & 7 Vict. c. 18, s. 76.

(*b*) [See Hawkins, *Pleas of the Crown* (4th ed.), Book I. ch. xii. s. 15; *Wing v. Earle* (1699), Cro. Eliz. 212, 267.]

"We have nothing to guide us except the words of the statute, 'ten miles.' We must therefore lay down an arbitrary rule, and I think the best rule will be to take the distance as the crow flies." This decision was acted upon in *Lake v. Butler* (1854), 5 E. & B. 99, where Crompton, J., said: "If this question were quite new, the convenience would be all in favour of construing the distance as that measured in a straight line, and the recent authorities being all in favour of this construction, we ought to adhere to it, so that the Legislature may know how such general words in an Act will be construed by the Courts." ] *Vide ante*, p. 150.

MINERAL CONTRACTED TO BE GOTTEN, in 50 & 51 Vict. c. 58 (Coal Mines), s. 12, in a coal-mine includes *slack*: *Netherseal Co. v. Bourne* (1889), 14 App. Cas. 247; and small coal: *Brace v. Abercarn Colliery Co.*, (1891) 2 Q. B. 699. See also *Kearney v. Whitehaven Colliery Co.*, (1893) 1 Q. B. 700 (C. A.).

MINERALS, as used in the Act of Settlement passed in the Isle of Man, 1704, is used in its "more limited and popular meaning, which would not embrace such substances as clay and sand, though doubtless the word in its scientific and widest sense may include substances of this nature, and when unexplained by the context, or by the nature and circumstances of the transaction, or by usage, would, in most cases, do so." *Att.-Gen. v. Mylchreest* (1879), 4 App. Cas. 305.

MINES, MINERALS, as used in 8 & 9 Vict. c. 20 (English Railway Clauses), s. 77, in 8 & 9 Vict. c. 33 (Scotch Railway Clauses), s. 70, and in 10 & 11 Vict. c. 17 (Waterworks Clauses Act, 1847), are not definite or scientific terms in an Act, but are susceptible of limitation or expansion according to the intention with which they are used. *Lord Provost of Glasgow v. Farie* (1888), 13 App. Cas. 657, 675; and see *Midland Rail. Co. v. Robinson* (1889), 15 App. Cas. 19; *Scott v. Midland Rail. Co.*, (1901) 1 K. B. 317.

MINES.—The policy of Acts in excepting minerals from conveyances to compulsory takers of land favours a liberal and not a limited construction of the reservation to the seller. *Lord Provost of Glasgow v. Farie* (1888), 13 App. Cas. 676.

„ AND MINERALS, in the British Columbia Act (47 Vict. c. 14), s. 3, held not to include precious metals, but only *alia similia* to the substances already mentioned in the Act. *Esquimalt Rail. Co. v. Bainbridge*, (1896) App. Cas. 561.

„ OF COAL.—Used by the Legislature to denote the minerals *in situ* without reference to the manner in which they can be worked. *Lord Provost of Glasgow v. Farie* (1888), 13 App. Cas. 657, Lord Watson.

[MINISTER, in 5 & 6 Will. 4, c. 76, s. 68 (Municipal Corporations), was used as the "most comprehensive" term for describing persons who perform religious duties. *R. v. Mayor, &c. of Liverpool* (1838), 8 A. & E. 176, 181.]



**MISBEHAVIOUR**, in sect. 5 of Poor Relief Act, 1815 (55 Geo. 3, c. 137).  
*Mile End Guardians v. Sims*, (1905) 2 K. B. 200.

**MISDEMEANOUR**, in Acts extending or applied to Scotland, means sometimes "crime and offence" (*e.g.*, 1889, c. 69, s. 8), sometimes "offence" only. Int. Act, 1889 (c. 63), s. 28, *post*, Appx. C.

**MISTAKE**, in R. S. C. 1875, Ord. XVI. r. 2, means mistake of law or fact. *Duckett v. Gover* (1877), 6 Ch. D. 82.

**MODEL**, unless the context otherwise requires, "includes design, pattern, and specimen." Official Secrets Act, 1889 (c. 52), s. 8.

"**MONEY PAID**," in sect. 1 of the Gaming Act, 1892 (55 & 56 Vict. c. 9), does not include a stake deposited to abide the event of a wager. *Burge v. Ashley & Smith, Ltd.*, (1900) 1 Q. B. 744 (C. A.).

**MONEY SECURED** by a marketable security within Sched. 1 of the Stamp Act, 1891 (54 & 55 Vict. c. 39), includes any premium payable on redemption of a debenture. *Knight's Deep, Ltd. v. Inland Revenue Commissioners*, (1900) 1 Q. B. 217.

**MONTH**.—*Vide ante*, p. 150.

„ "The term 'a calendar month,'" said Brett, L.J., in *Migotti v. Colwill* (1879), 4 C. P. D. 238, "is a legal and technical term, meaning that, in computing time by calendar months, the time must be reckoned by looking at the calendar and not by counting days, so that one calendar month's imprisonment is to be calculated from the day of imprisonment to the day numerically corresponding to that day in the following month less one."  
 "The calendar month," said Cockburn, C.J., in *Freeman v. Read* (1863), 4 B. & S. 184, "is complete when, starting from a given day in the first month, you come to the corresponding day in the succeeding month, whatever be the length of either. . . . You cannot, in reckoning a calendar month, include two days of the same number." See *Goldsmiths' Co. v. West Metropolitan Rail. Co.*, (1904) 1 K. B. 1; *Bruner v. Moore*, (1904) 1 Ch. 305.

„ [in 24 Geo. 2, c. 44, s. 1, which enacted that "no writ shall be sued out against any justice of the peace for anything done in the execution of his office, until notice in writing of such intended writ shall have been delivered to him . . . at least one calendar month before the suing out the same," means one month exclusive of the day on which the notice is given.  
 "Where," said Alderson, B., in *Young v. Higgon* (1840), 6 M. & W. 54, "there is given to a party a certain space of time to do some act, which space of time is included between two other acts to be done by another person, both the days of doing those acts ought to be excluded, in order to insure to him the whole of that space of time. . . . The Act of Parliament allows him a month as an intervening period within which he may deliberate whether he will do a certain act—viz., tender amends; and unless you exclude both the first and the last day, you do not give him a whole month for that purpose." Unless it is ex-

pressly enacted to the contrary, "where an Act of Parliament gives a given number of days for doing a particular act, and says nothing about Sunday, the days mentioned are to be taken as consecutive days, including Sunday." *Ex parte Simkin* (1864), 2 E. & E. 392.] See *Radcliffe v. Bartholomew*, (1892) 1 Q. B. 161.

MORTGAGE, in sect. 86 of the Stamp Act, 1891 (54 & 55 Vict. c. 39). See *United Realisation Co. v. Inland Revenue Commissioners*, (1899) 1 Q. B. 351; *City of London Brewery Co. v. Inland Revenue Commissioners*, (1899) 1 Q. B. 121 (C. A.).

MUNICIPAL BOROUGH.—See Int. Act, 1889, s. 15, *post*, Appendix C.

„ INSTITUTIONS, in sect. 92 of the British North America Act, 1867. See *Att.-Gen. for Ontario v. Att.-Gen. for Canada*, (1896) App. Cas. 348.

MUTUAL DEALINGS means obligations arising between the parties themselves, perhaps in the same rights. *Peat v. Jones* (1881), 8 Q. B. D. 147; *Re Daintry*, (1900) 1 Q. B. 546.

„ DEBTS AND CREDITS, in 32 & 33 Vict. c. 71 (Bankruptcy), s. 39 (= 46 & 47 Vict. c. 52, s. 38), comprises all ordinary transactions between two persons in their individual capacities, and was added to get rid of questions which might arise whether a transaction would or would not end in a debt. (Same case.)

NATIONAL DEBT COMMISSIONERS.—See Int. Act, 1889, c. 63, s. 12 (17), *post*, Appendix C.

“NAVIGATING,” in bylaws made under the Thames Conservancy Act, 1894 (57 & 58 Vict. c. clxxxvii.), held to include the hauling of a barge by a rope out of a dock. *Gardner v. Doe*, (1906) 2 K. B. 171, 184.

[NEAREST PUBLIC THOROUGHFARE, in 37 & 38 Vict. c. 49 (Licensing), s. 10, is an expression not necessarily restricted to a road, but may mean a way by water where there is a public ferry. *Coulbert v. Troke* (1875), 1 Q. B. D. 3.]

NECESSARIES, in the Sale of Goods Act, 1893 (56 & 57 Vict. c. 71), s. 2, means goods suitable to the condition of life of the infant (or other person incompetent to contract who purports to buy), and to his actual requirements at the time of the sale or delivery. See *Johnstone v. Marks* (1887), 19 Q. B. D. 509.

„ [in 3 & 4 Vict. c. 65 (Admiralty), s. 6, is to be understood in its common law sense of “whatever is fit and proper for the service on which a vessel is engaged, and what the owner of the vessel, as a prudent man, would have ordered if present at the time.” *The Riga* (1872), L. R. 3 Adm. & E. 522.] See *The Marianne*, (1891) P. 180; *The Orienta*, (1895) P. 49 (C. A.).

„ [in 24 & 25 Vict. c. 10, s. 5 (Admiralty), does not include the expenses of a witness in a collision suit. *The Bonne Amélie* (1866), L. R. 1 Adm. & E. 20.]

NEW BUILDING, in a local improvement Act, Hastings, 1885 (c. cxvii.), s. 111, held to include a bedroom built upon the site of a conservatory previously attached to a house, and occupying no greater space than the conservatory. *Meadows v. Taylor* (1890), 24 Q. B. D. 718.

NEW STREET.—(1) In the Metropolis Management Acts. *Allen v. Fulham Vestry*, (1899) 1 Q. B. 681; *Simmonds v. Fulham Vestry*, (1900) 2 Q. B. 188; *Arter v. Hammersmith Vestry*, (1897) 1 Q. B. 646; *Battersea Vestry v. Palmer*, (1897) 1 Q. B. 220. (2) In the Public Health Act, 1875, s. 150. *Bonella v. Twickenham Local Board* (1887), 20 Q. B. D. 63; *Att.-Gen. v. Rufford*, (1899) 1 Ch. 537.

NEXT, in 14 Chas. 2, c. 12, s. 2 (Poor Law), giving power to appeal to the next sessions, means "the next possible." *R. v. Yorkshire* (1779), 1 Doug. 192, cited in *R. v. Sussex* (1864), 4 B. & S. 977.

"NEXT PRACTICABLE SESSIONS," in sect. 31 of the S. J. Act, 1879 (42 & 43 Vict. c. 49), and other like Acts, means the first sessions at which the appeal might with reasonable diligence be heard. *R. v. Peterborough* (1857), 26 L. J. M. C. 153; *R. v. Surrey Justices* (1881), 6 Q. B. D. 100; *West Riding of Yorkshire County Council v. Middleton Parish Council*, (1906) 2 K. B. 157. What they are is a question of fact in each case. *R. v. Carmarthen Justices* (1893), Ryde's Rating Appeals, 334 (C. A.).

NOMINAL SHARE CAPITAL.—See *Att.-Gen. v. Midland Rail. Co.*, (1902) App. Cas. 171.

NOTE, in the Bills of Exchange Act, 1882 (45 & 46 Vict. c. 61), ss. 1, 64, 89, does not include a Bank of England note. *Leeds Bank v. Walker* (1883), 11 Q. B. D. 84.

NOTICE, in Employers' Liability Act, 1880 (43 & 44 Vict. c. 42), s. 7, means a written notice. *Moyle v. Jenkins* (1881), 8 Q. B. D. 116; *Keen v. Millwall Dock Co.* (1882), 8 Q. B. D. 482.

NOT NEGOTIABLE, in 45 & 46 Vict. c. 61 (Bills of Exchange), ss. 8, 73, 76. See *National Bank v. Silke*, (1891) 1 Q. B. 435.

NOW, in sect. 27 of the Highway Act, 1835 (5 & 6 Will. 4, c. 50), held to mean "for the time being." *R. v. Wolferstan*, (1893) 2 Q. B. 451.

NOW PAID, in the Bills of Sale Act, 1878 (41 & 42 Vict. c. 31), s. 8. See *Re Wiltshire*, (1900) 1 Q. B. 96.

NOXIOUS THING, in 24 & 25 Vict. c. 100, s. 58, includes a thing like oil of juniper, which is not noxious unless taken in large quantities. *R. v. Cramp* (1880), 5 Q. B. D. 307.

NUISANCE, in Public Health Act, 1875 (38 & 39 Vict. c. 55), s. 47, "is used in the ordinary legal sense of the word, and includes, in addition to matters injurious to health, matters substantially

offensive to the senses." Per Grove, J., *Banbury v. Page* (1881), 8 Q. B. D. 98.

NUISANCE OR INJURIOUS TO HEALTH, in sect. 91 of the Public Health Act, 1875, means a nuisance either interfering with personal comfort or injurious to health. *Bishop Auckland L. B. v. Bishop Auckland Iron Co.* (1882), 10 Q. B. D. 138.

NULL.—See *Void*.

OATH.—*Vide ante*, p. 151; Int. Act, 1889, s. 4, *post*, Appendix C.

„ in the Commissioners of Oaths Act, 1889 (c. 10), s. 11, “includes affirmation or declaration.”

OCCUPATION means (per Kelly, C.B.) “the trade or calling by which a man ordinarily seeks to get his living,” and (per Martin, B.) “the business in which a man is usually engaged to the knowledge of his neighbours.” *Luckin v. Hamlyn* (1869), 21 L. T. 366, and see per Baggallay, L.J., in *Ex parte National Mercantile Bank* (1880), 15 Ch. D. 54. *Feast v. Robinson*, (1894) 63 L. J. Ch. 321, 323 (Romer, J.); *Kemble v. Addison*, (1900) 1 Q. B. 431.

OCCUPIER OF LAND, in Ground Game Act, 1880 (43 & 44 Vict. c. 47), includes an occupying owner and is not limited to occupying tenant. *Anderson v. Vicary*, (1900) 2 Q. B. 287 (C. A.).

„ in sect. 36 of Highway Act, 1835. See *R. v. Somers*, (1906) 1 K. B. 396.

OFFICE OF PROFIT.—*Vide ante*, p. 159.

„ UNDER HER MAJESTY THE QUEEN, unless the context otherwise requires, (1) “includes any offices or employment in or under any department of the Government of the United Kingdom;” and (2), “so far as regards any document, sketch, plan, model, or information relating to the naval or military affairs of Her Majesty, includes any office or employment in or under any department of the Government of any of Her Majesty’s possessions.” Official Secrets Act, 1889 (c. 52), s. 8.

OFFICER OF A COMPANY. See *Re Tomkins & Co.*, (1901) 1 K. B. 476.

OFFICIATING CLERGYMAN, in 16 & 17 Vict. c. 97, s. 87, means, in the absence of the vicar, the curate of the parish. *R. v. Pemberton* (1879), 5 Q. B. D. 95.

OLD MARKS, in the Patents, &c. Act, 1883 (c. 57), s. 69. See *Re Meeus*, (1891) 1 Ch. 41; *Re Wright, Crossley & Co.’s application*, (1900) 2 Ch. 218.

OMNIBUS, in the Towns Police Clauses Acts, 1847 (10 & 11 Vict. c. 89) and 1889 (52 & 53 Vict. c. 14), includes every omnibus, char-à-banc, waggonette, brake, stage-coach, and other carriage plying or standing for hire or used to carry passengers at separate fares

to, from, or in any part of the prescribed distance. See *Yorkshire Woollen District Electric Tramways, Ltd. v. Ellis*, (1905) 1 K. B. 396.

ON [(in 20 & 21 Vict. c. 85, s. 32), in the expression "on any such decree," is "an elastic expression, which, so far from excluding the idea of its meaning *after*, is more consistent with that signification than any other." *Bradley v. Bradley* (1878), 3 P. D. 50.] "Still," said Jessel, M.R., in *Robertson v. Robertson* (1883), 8 P. D. 96, "it is not to be conceived that a period of more than a year can be included in the word 'on.'"

OPEN AND PUBLIC PLACE TO WHICH THE PUBLIC HAVE OR ARE PERMITTED TO HAVE ACCESS, in the Vagrant Act Amendment Act, 1873 (36 & 37 Vict. c. 38), s. 3, includes a railway carriage. *Langrish v. Archer* (1882), 10 Q. B. D. 44. Cf. *R. v. Wellard* (1884), 14 Q. B. D. 63.

OR may be read as "and" if the context makes the latter meaning necessary to avoid contradiction or absurdity. *Mersey Docks Board v. Henderson* (1888), 13 App. Cas. 595, 601, Halsbury, L.C.; *Walker v. Mayor of York*, (1906) 1 K. B. 724.

„ [in 1 Jas. 1, c. 15, was read as if it was "and"; which, said Lord Kenyon, "is frequently done in legal instruments where the sense requires it." *Fowler v. Paget* (1798), 7 T. R. 514.] "Or" never does mean 'and,' unless there is a context which shows it is used for 'and' by mistake." *Morgan v. Thomas* (1882), 9 Q. B. D. 643.

„ in 3 & 4 Vict. c. 86, s. 20 (Church Discipline), in the expression "every suit or proceeding," means "and." *Ditcher v. Denison* (1856), 11 Moore, P. C. 338.

„ in 25 & 26 Vict. c. 102 (Metropolis Local Management), s. 98, relating to the formation of streets, is used conjunctively = nor, and not disjunctively or alternatively (in its ordinary grammatical sense). *Metropolitan Board of Works v. Steed* (1881), 8 Q. B. D. 445; see *Hampstead (Mayor, &c.) v. Midland Rail. Co.*, (1905) 1 K. B. 538 (C. A.).

ORDER, in the Supreme Court of Judicature Act, 1873 (36 & 37 Vict. c. 66), s. 19, applies to the decision of the King's Bench Division upon a case stated by consent under Baines' Act (12 & 13 Vict. c. 45), s. 11, as the opinion of that Court is an adjudication binding on the parties to the case. *Mayor, &c. of Peterborough v. Wilsthorpe Overseers* (1883), 12 Q. B. D. 1.

ORDINARY LANGUAGE, as used in 43 & 44 Vict. c. 42, s. 4, means a man's "own untutored language." *Stone v. Hyde* (1882), 9 Q. B. D. 77.

"ORDINARY LUGGAGE," in special Railway Acts, does not include bicycles. *Britten v. G. N. R.*, (1899) 1 Q. B. 243, where the cases are collected.

ORDNANCE MAP.—See Int. Act, 1889, s. 25, *post*, Appendix C.

ORE, in 5 Will. & Mar. c. 6, s. 3, means metal in its crude state separated from the rock. *Att.-Gen. v. Morgan*, (1891) 1 Ch. 432, 462, Kay, L.J.

OUTGOINGS.—See *Horner v. Franklin*, (1905) 1 K. B. 479; *Greaves v. Whitmarsh*, (1906) 2 K. B. 340.

OWNER.—See *Adjoining owner*.

„ defined in Advertising Stations (Rating) Act, 1889 (c. 27), s. 2; Tithe Act, 1836; Inclosure Act, 1845, s. 16; Land Drainage Act, 1861; Improvement of Land Act, 1864; Public Health Act, 1875, s. 4; Ancient Monuments Protection Act, 1882; Housing of the Working Classes Act, 1890; Public Health London Act, 1891, s. 141.

„ in Public Health Act, 1875, s. 275, includes the trustees of a Nonconformist chapel: *Hornsey L. B. v. Brewis* (1891), 60 L. J. M. C. 48; but in sect. 4 of the Act, not a receiver appointed by the High Court: *Bacup Corporation v. Smith* (1890), 44 Ch. D. 395. See *Williams v. The Wandsworth D. B. W.* (1884), 13 Q. B. D. 211; *Lightbound v. Higher Bebington L. B.* (1885), 14 Q. B. D. 849; and see *Hornsey District Council v. Smith*, (1897) 1 Ch. 843; *Att.-Gen. v. Meyrick*, (1894) 3 Ch. 209; *Tendring Union v. Downham*, (1891) 3 Ch. 265.

„ in Public Health (London) Act, 1891 (54 & 55 Vict. c. 76), s. 141, may include sub-lessees who receive the rack-rent: *Truman v. Kerslake*, (1894) 2 Q. B. 774. Cf. *Thames Conservators v. London Port Sanitary Authority*, (1894) 1 Q. B. 647; *Hackney Corporation v. Lea Conservancy*, (1904) 2 K. B. 541.

„ in sects. 503 and 504 of the Merchant Shipping Act, 1894 (57 & 58 Vict. c. 60), does not include charterers by demise of a ship. *The Hopper* (No. 66), (1906) P. 34.

„ OF LAND, as used in 18 & 19 Vict. c. 120, s. 250, and in 25 & 26 Vict. c. 102, s. 77, does not apply to a land company who have irrevocably dedicated their land to the public: *Plumstead Board v. British Land Company* (1875), L. R. 10 Q. B. 203; but includes a cemetery company prohibited by statute from selling consecrated parts of the cemetery, but making profits by sale of exclusive rights of burial: *St. Giles Camberwell v. London Cemetery Co.*, (1894) 1 Q. B. 699. Cf. *Islington Vestry v. Cobbett*, (1895) 1 Q. B. 369; *Hampstead Corporation v. Midland Rail. Co.*, (1905) 1 K. B. 538; *L. C. C. v. Wandsworth Corporation*, (1903) 1 K. B. 797.

„ [OF STRUCTURE, as used in sect. 72 of the Metropolitan Building Act, 1855 (18 & 19 Vict. c. 122), did not apply to an incumbent of a district church in the metropolis, although the freehold of the church is vested in him by statute. *R. v. Lee* (1879), 4 Q. B. D. 75]. Cf. *Wright v. Ingle* (1885), 16 Q. B. D. 379. See now 57 & 58 Vict. c. cccxiii. s. 5, sub-s. 29 (London Building).

„ OF THE LAND, in 5 & 6 Will. 4, c. 50 (Highways), s. 65, means the person in actual occupation of the land. *Woodard v. Billericay* (1879), 11 Ch. D. 217.

PAID IN FULL, in sect. 35 of Bankruptcy Act, 1883 (46 & 47 Vict. c. 52).  
See *Re Keet*, (1905) 2 K. B. 666 (C. A.).

[PAINTINGS, in 11 Geo. 4 & 1 Will. 4, c. 68 (sect. 1 of the Carriers Act, 1830), does not include "everything which has painting done upon it by a workman; it must mean something of value as a painting (value being necessary to make the statute applicable) and something on which skill has been bestowed in producing it." *Woodward v. London and North-Western Rail. Co.* (1878), 3 Ex. D. 124.]

PARDON.—See *Hay v. Justices of Tower* (1890), 24 Q. B. D. 563.

PARENT.—*Vide ante*, p. 159.

„ includes guardian and every person who is liable to maintain or had the actual custody of a child. Welsh Intermediate Education Act, 1889 (c. 40), s. 17.

„ used as a compendious term for any person liable to maintain a child or entitled to its custody. Custody of Children Act, 1891 (54 & 55 Vict. c. 3), s. 5. *Cf.* Prevention of Cruelty to Children Act, 1904 (4 Edw. 7, c. 15), s. 23.

PARISH.—*Vide ante*, p. 152; Int. Act, 1889, s. 15, *post*, Appendix C.

„ in 39 & 40 Vict. c. 61 (Divided Parishes), s. 34, means "parish" only, and does not mean "union." *Plomesgate Union v. West Ham* (1880), 6 Q. B. D. 576.

PARLIAMENT.—See *Law of Parliament*.

PARLIAMENTARY BOROUGH.	} See Int. Act, 1889, ss. 15 (3), 17 (1), (2), <i>post</i> , Appendix C.
„ ELECTION.	
„ REGISTER OF VOTERS.	

[PART OF A VOLUME, in sects. 2, 13 of the Copyright Act, 1842 (5 & 6 Vict. c. 45) (Copyright), does not apply to the mere title of a work which was not actually in existence at the time of the registration, so as to give a copyright in that one word as the title of a book to be hereafter written: *Maxwell v. Hogg* (1867), 2 Ch. App. 317; but *aliter*, if the work was actually in existence: *Weldon v. Dicks* (1879), 10 Ch. D. 247.]

PARTNER.—See *Co-partnership*.

PARTY TO AN ACTION, in the Judicature Act, 1873 (36 & 37 Vict. c. 66), s. 100, does not include a guardian *ad litem*. *Ingram v. Little* (1883), 11 Q. B. D. 251.

"PASSAGE HOME," in sect. 186 of the Merchant Shipping Act, 1894.  
See *Purves v. Straits of Dover S. S. Co.*, (1899) 2 Q. B. 217 (C. A.).

PASSENGER.—*Vide ante*, p. 159.

PASSING ON THE DEATH, in the Finance Act, 1894 (57 & 58 Vict. c. 30), ss. 1, 2, 3. See *Att.-Gen. v. Dobree*, (1900) 1 Q. B. 442; *Att.-Gen. v. Murray*, (1903) 2 K. B. 64.

PATTERN, in the Patents, &c. Act, 1883 (46 & 47 Vict. c. 57), s. 60, may include shape, configuration, or ornament. *Heath v. Rollason*, (1898) App. Cas. 499.

PAUPER, in 39 & 40 Vict. c. 61 (Divided Parishes), s. 36, means a person who was a pauper at the commencement of the Act. *Brighton v. Strand Union*, (1891) 2 Q. B. 156.

PAYABLE, in sect. 3 of the Truck Act, 1831 (1 & 2 Will. 4, c. 37), does not mean payable after set-off of sums due by the workmen to the employer, but apparently payable after deductions allowed by sect. 23 of the Act. *Williams v. North's Navigation Collieries* (1889), *Ltd.*, (1906) App. Cas. 136.

[PEERAGE, in the Union with Ireland Act (39 & 40 Geo. 3, c. 67), art. iv. cl. 5, means the status and condition of a peer. *Lord Fermoy's case* (1856), 5 H. L. C. 716.]

PENALTY.—See *ante*, p. 425 *et seq.*

PENDING, in 32 & 33 Vict. c. 83, s. 15, was used with respect to “a cause in a court of justice when any proceeding can be taken in it.” Per Jessel, M.R., in *Fordham v. Clayett* (1882), 20 Ch. D. 653.

PER, the Latin preposition, as used in 8 & 9 Vict. c. clxix. s. 104, in the expression “a penny per ton per mile,” properly and primarily signifies the distribution of the charge over the whole aggregate weight of goods for the whole aggregate distance they may be conveyed, tons and miles being mentioned only as common measures of weight and distance convenient for the purpose of measurement. *Pryce v. Monmouthshire Canal, &c. Co.* (1879), 4 App. Cas. 216, Lord Selborne.

PEREMPTORY, in a rule of Court which has effect of statute, R. S. C. Ord. XIX. r. 8. See *Falek v. Axthelm* (1890), 24 Q. B. D. 174; Ann. Practice, 1907, p. 241.

PERIODICAL WORK, in 5 & 6 Vict. c. 45, s. 18, includes a newspaper. Per Jessel, M.R., in *Walter v. Howe* (1881), 17 Ch. D. 710.

[PERMANENT SICKNESS, in 1 & 2 Will. 4, c. 22 (Evidence on Commission), s. 10, “implies something more than such a degree of sickness as would prevent the attendance of a witness at a particular trial.” *Duke of Beaufort v. Crawshay* (1866), L. R. 1 C. P. 714.]

PERMIT, in Advertising Stations Rating Act, 1889 (52 & 53 Vict. c. 27), s. 3. See *Burton v. St. Giles and St. George's Assessment Committee*, (1900) 1 Q. B. 389.

PERMIT DRUNKENNESS [in sect. 13 of the Licensing Act, 1872 (35 & 36 Vict. c. 94), does not include the case of a person getting drunk himself. *Warden v. Tye* (1877), 2 C. P. D. 74.] As to what it does include see *Somerset v. Wade*, (1894) 1 Q. B. 574; *Edmunds v. James*, (1892) 1 Q. B. 18; *Hope v. Warburton*, (1892) 2 Q. B. 134.



PERQUISITES, in the Pension Duty Act, 1757 (31 Gep. 2, c. 22), imposing duties on pensions = "such profits of offices and employments in Great Britain as arise from fees established by custom or authority, and payable either by the Crown or the subjects in consideration of business done from time to time in the course of executing such offices and employments." 32 Geo. 2, c. 32; 2 Rev. Stat. (2nd ed.), p. 329.

,, in the Income Tax Acts. See *Herbert v. McQuade*, (1902) 2 K. B. 631 (C. A.).

NOTE.—These enactments are repealed as to England, and payment by fees is almost extinct, except in the case of clerks to justices.

PERSON.—*Vide ante*, p. 149.

,, [in 1 & 2 Will. 4, c. lxxvi. s. 85, held not to include a corporation. *Shoreditch Guardians v. Franklin* (1878), 3 C. P. D. 377, 380; *cf. Pearks, Gunston and Tee v. Ward*, (1902) 2 K. B. 1; *ante*, p. 444; *Hirst v. West Riding Union Banking Co.*, (1901) 2 K. B. 560.

,, in 25 Vict. No. 1 (New South Wales), s. 13, is not necessarily restricted to persons above twenty-one years of age. *O'Shannassy v. Joachim* (1876), 1 App. Cas. 82, 90.]

,, in sect. 34 of the Poor Law Amendment Act, 1876 (39 & 40 Vict. c. 61), held to include an illegitimate child under sixteen. *Woolwich Union v. Fulham Union*, (1906) 2 K. B. 240 (C. A.).

PERSONAL ESTATE, in sect. 1 of the Wills Act, 1861 (24 & 25 Vict. c. 114), includes leaseholds. *Re Grassi*, (1905) 1 Ch. 584, Buckley, J.

PETTY SESSIONAL COURT.—Defined in the Int. Act, 1889 (c. 63), s. 13 (12), *post*, Appendix C.

,, COURT-HOUSE.—Defined in the Int. Act, 1889 (c. 63), s. 13 (13), *post*, Appendix C.

PHYSICIAN, in the Medical Acts, does not include a licentiate of the Society of Apothecaries granted since 1886. *Hunter v. Clare*, (1899) 1 Q. B. 635.

PIRACY, in 6 & 7 Vict. c. 76, s. 1, meant such an offence as by the municipal laws of the United States is constituted piracy, and is within the exclusive jurisdiction of the United States. *Re Tivnan* (1864), 5 B. & S. 645, especially note (a) at p. 696.

PLACE, [in 3 & 4 Vict. c. 61, s. 15, is not confined to one parish, but means "any aggregation of houses and inhabitants which has received a separate name." *Rice v. Slee* (1872), L. R. 7 C. P. 378, 381; following *R. v. Charlesworth* (1851), 20 L. J. M. C. 181.]

,, in 16 & 17 Vict. c. 119 (Betting Houses), s. 3. See *Powell v. Kempton Park Racecourse Co.*, (1899) App. Cas. 143; *R. v.*

*Humphrey*, (1898) 1 Q. B. 875; *Brown v. Patch*, (1899) 1 Q. B. 892; *Belton v. Busby*, (1899) 2 Q. B. 380; *Galloway v. Maries* (1881), 8 Q. B. D. 275; *Hornsby v. Raggett*, (1892) 1 Q. B. 20.

PLACE BELONGING TO HIS MAJESTY THE KING, in the Official Secrets Act, 1889, c. 52, s. 8, includes a place belonging to any department of the Government of the United Kingdom, or of any of His Majesty's possessions, whether the place is or is not actually vested in His Majesty.

„ [HAVING A KNOWN OR DEFINED BOUNDARY, in 21 & 22 Vict. c. 98, s. 12, did not necessarily mean a legal district having a legal boundary, but it is sufficient if the place have an actual known boundary, or one which is “physical, visible, and notorious.” *R. v. Local Government Board* (1873), L. R. 8 Q. B. 227.] See now Public Health Act, 1875 (38 & 39 Vict. c. 55), s. 272.

PLACE OF PUBLIC RESORT in a local Act (40 & 41 Vict. c. xxx. s. 251), held to mean a place to which the public go as a matter of fact, and not merely a place to which they go as of right. *Kitson v. Ashe*, (1899) 1 Q. B. 425.

PLACE OF SAFETY, in sect. 29 of the Prevention of Cruelty to Children Act, 1904 (4 Edw. 7, c. 15), includes “any place certified by the local authority” under this Act for the purposes of this Act, and also any workhouse or police station, or any hospital or surgery, or place of the like kind.

„ OF WORSHIP.—See *Usual place of worship*.

„ WHERE A COMPANY CARRIES ON OR EXERCISES A TRADE OR BUSINESS, (1) with reference to the place where a company may be sued, means where its place of management is; (2) in the Income Tax Acts, the place where its profit is made, regardless of the position of the head office or place of management. *Erichsen v. Last* (1881), 8 Q. B. D. 414; cf. *Grainger v. Gough*, (1896) App. Cas. 325; *Commissioners of Taxes v. Kirk*, (1900) App. Cas. 588.

PLANT, in sect. 12 of the Customs and Inland Revenue Act, 1878 (41 & 42 Vict. c. 15), held to include the dismantled hulk of a sailing ship used as a floating warehouse for coal. *John Hall & Co. v. Rickman*, (1906) 1 K. B. 311, Walton, J.

PLATE, in sect. 59 of the Customs Act, 1842 (5 & 6 Vict. c. 47), includes gold and silver watch cases if imported separately from the works. *Goldsmiths' Co. v. Wyatt*, (1905) 2 K. B. 586, Channell, J.

PLEDGE.—In the Factors Act, 1889 (c. 45), includes any contract, pledging, or giving a lien or security on, goods, whether in consideration of an original advance or of any further or continuing advance or of any pecuniary liability. Sect. 1 (5).

PLURAL.—*Vide ante*, p. 149.

POINT, as used in the Rules for the Navigation of the Thames, “is not to be construed mathematically, for the rule is a nautical one,

framed in nautical language, and means what I may term the whole of the point, and not its mere apex." Per Brett, M.R., in *The Margaret* (1885), 9 P. D. 48.

POLICE AREA.—Defined in Police Act, 1890 (c. 45), s. 33.

„ DISTRICT.—Defined in Riot Damage Act, 1886 (c. 38), s. 9.

„ RECEIVER=receiver of the Metropolitan Police District. 49 & 50 Vict. c. 22 (Metropolitan Police Act, 1886), s. 7.

POLICY OF INSURANCE AGAINST ACCIDENT.—Defined in Stamp Act, 1891 (c. 39), s. 98; Finance Act, 1895 (58 & 59 Vict. c. 16), s. 13.

POLITICAL CHARACTER, in Extradition Act, 1870 (33 & 34 Vict. c. 52), s. 3 (1).—This term, as applied to an offence, means "incidental to, and forming part of, political disturbances." *Re Castioni*, (1891) 1 Q. B. 149; *Re Meunier*, (1894) 2 Q. B. 415.

POOR LAW UNION.—*Vide ante*, p. 152.

PORT, in 54 Geo. 3, c. 159, is used, not in its geographical sense, but in its legal and proper sense, as denoting a place to which ships resort for loading and discharging. *Nicholson v. Williams* (1871), L. R. 6 Q. B. 632; *Assheton Smith v. Owen*, (1906) 1 Ch. 189, 204 (C. A.).

„ as fixed for fiscal purposes, by statute or Treasury warrant, or Customs certificate or royal prerogative (*i.e.*, charter), and proof of *de facto* user as the port for customs, port dues, &c. See *Hunter v. Northern Marine Insurance Co.* (1888), 13 App. Cas. 717; *Assheton Smith v. Owen*, (1906) 1 Ch. 189, 200 (C. A.); *Kingston-upon-Hull Dock Co. v. Browne* (1831), 2 B. & Ad. 43.

„ for pilotage purposes. See *Garston S.S. Co. v. Hickie* (1885), 15 Q. B. D. 580.

„ in its commercial sense, as understood by shippers, owners, and underwriters = a place of more or less shelter for a ship while goods are being loaded or unloaded, including a roadstead. See *Insurance Co. v. Gavin* (1835), 4 W. & S. 17 (H. L.); *Garston Sailing Ship Co. v. Hickie* (1885), 15 Q. B. D. 588.

POSSESSION, as used in 27 Hen. 8, c. 10, and 2 & 3 Will. 4, c. 45, s. 26, has a technical meaning. *Heelis v. Blain* (1865), 18 C. B. N. S. 108.

POSTMASTER-GENERAL means His Majesty's Postmaster-General for the time being. Int. Act, 1889 (c. 63), s. 12 (11), *post*, Appendix C.

PRACTICABLE, in sect. 19 of the Regulation of Railways Act, 1868 (31 & 32 Vict. c. 119), which deals with the issue of smoke from locomotives. *L. C. C. v. G. E. R.*, (1906) 2 K. B. 312.

„ as to appeals to Quarter Sessions, see *Next practicable sessions*.

"PRACTICE AND PROCEDURE," in the Supreme Court of Judicature Act, 1894 (57 & 58 Vict. c. 14), s. 1, does not include prohibition:

*Watson v. Petts*, (1899) 1 Q. B. 54; nor an order by the judge at chambers to state a case pending an arbitration; nor applications under sect. 41 of the Regulation of Railways Act, 1868 (31 & 32 Vict. c. 119). *Long v. G. N. Rail. Co.*, (1902) 1 K. B. 813 (C. A.); *In re Frere and North Shore Mill Co.*, (1905) 1 K. B. 366 (C. A.); and see Ann. Pr. 1907, vol. ii. p. 575.

PRECINCTS, of a harbour. *Musselburgh Real Estate Co. v. Musselburgh Provost*, &c., (1905) App. Cas. 491.

PREFERENCE in the Bankruptcy Act, 1883 (46 & 47 Vict. c. 52), s. 28. *Sharp v. Jackson*, (1899) App. Cas. 419.

„ SHARES.—Defined in Companies Clauses Act, 1863 (26 & 27 Vict. c. 118), s. 14.

„ „ in Railway Companies Act, 1867 (30 & 31 Vict. c. 127), ss. 12, 17, does not apply to split ordinary shares, so that the holders of the preferred halves of such shares are not, by virtue of that Act, entitled, in a winding-up, to any priority over the shares of the deferred halves. *Re Brighton and Dyke Rail. Co.* (1890), 44 Ch. D. 28.

PRESCRIBED means prescribed by rules and orders under the Act in which it is used. See 52 & 53 Vict. c. 48 (County Court Appeals, Ireland), s. 18 (1).

[PRESUME, in 22 Geo. 3, c. 45, s. 9, implies, “not a mere ignorant act, but an act in which a person knowingly takes upon himself to do that which the law says shall not be done under the circumstances.” *Royse v. Birley* (1869), L. R. 4 C. P. 315.]

“PRINCIPAL MANSION HOUSE,” in sect. 10 of the Settled Land Act, 1890 (53 & 54 Vict. c. 69). See *Gilbey v. Rush*, (1906) 1 Ch. 11, 20, Kekewich, J.

PRINCIPLES, in 31 & 32 Vict. c. 125 (Parliamentary Elections), s. 26, although “a large and comprehensive word, means nothing more in this [particular] section than ‘practice’ or ‘procedure.’” Per Keating, J., in *Earl Beauchamp v. Madresfield* (1873), L. R. 8 C. P. 245, 253.

PRISON SERVICE, in the Prison Act, 1877 (40 & 41 Vict. c. 21), includes (1) service in a military prison under the Army Act, 1879, or the Army Act, 1881; (2) service in a naval prison under the Naval Discipline Act. See Prison Officers’ Superannuation Act, 1886 (c. 9).

PRIVATE ROAD, in 8 & 9 Vict. c. 19 (Railways Clauses, S.). See *Caledonian Rail. Co. v. Turcan*, (1898) App. Cas. 256.

PRIVITY, in sect. 502 of the Merchant Shipping Act, 1894 (57 & 58 Vict. c. 60). *The Diamond*, (1906) P. 282.

PRIVY COUNCIL means (1) “the Lords and others for the time being of His Majesty’s Most Honourable Privy Council;” (2) when used with reference to Ireland only, “the Privy Council of Ireland for the time being”—Int. Act, 1889, s. 12 (5), *post*,

Appendix C.; (3) in the British North America Act, 1867 (30 & 31 Vict. c. 3), and amending Acts, the Privy Council for Canada for the time being.

PROBATE DUTY.—A tax on the property to which the probate gives title. *Blackwood v. The Queen* (1882), 8 App. Cas. 82, 90.

PROCEEDING in 46 & 47 Vict. c. 52 (Bankruptcy), s. 55. See *In re Proctor*, (1891) 2 Q. B. 433.

„ in Railway and Canal Traffic Act, 1854 (17 & 18 Vict. c. 3).—Defined in *L. & F. Rail. Co. v. Greenwood* (1888), 21 Q. B. D. 215.

„ INSTITUTED, in the Married Women's Property Act, 1893 (56 & 57 Vict. c. 61), does not include appeals by a married woman. *Hood Barrs v. Cathcart*, (1896) App. Cas. 177. Nor a summons to vary a decree nisi made against the wife: *Gordon v. Gordon*, (1904) P. 163 (C. A.). It includes a written claim served by her on the sheriff claiming as hers goods taken in execution for the debt of another. *Nunn v. Tyson*, (1901) 2 K. B. 487. And intervention even after obtaining an order giving leave to intervene in a probate action. *Crickitt v. Crickitt*, (1902) P. 177.

PROCEEDS OF SALE, in general Bankruptcy Regulations (Bankruptcy Rules, 1886, App. Pt. II.). See *Ex parte Pedley*, (1906) 2 K. B. 213.

PRODUCED, with reference to copyright (1886, c. 33, s. 11), “means, as the case requires, published or made or performed or represented, and the expression ‘production’ is to be construed accordingly.”

PROFIT (GROSS), ITEMS TO BE TAKEN INTO ACCOUNT IN ESTIMATING.—See *Merthyr Tydfil L. B. v. Merthyr Union*, (1891) 1 Q. B. 186.

„ SEWER made for. See *Sykes v. Sowerby U. D. C.*, (1900) 1 Q. B. 584.

„ with reference to joint stock companies. See *Bond v. Barrow Hæmatite Steel Co.*, (1902) 1 Ch. 353.

PROFITS, in the Income Tax Act, 1853 (16 & 17 Vict. c. 34), Sched. D., means “the incomings of the concern after deducting the expenses of earning them.” Per Lord Selborne in *Mersey Docks v. Lucas* (1883), 8 App. Cas. 891, 903.

„ in Income Tax Act, 1842 (5 & 6 Vict. c. 35), s. 100, means “the surplus by which the receipts from the trade or business exceed the expenditure necessary for earning these receipts.” *Russell v. Town and County Bank* (1888), 13 App. Cas. 418, 424. It includes the surplus over expenditure of the receipts of a burial board, although by 15 & 16 Vict. c. 85, the surplus has to be applied in reduction of the poor-rate. *Paddington Burial Board v. Commissioners of Inland Revenue* (1884), 13 Q. B. D. 9. Cf. *Equitable Life Ass. Co. (U.S.) v. Bishop*, (1899) 2 Q. B. 439.

PROFITS, in Customs and Inland Revenue Act, 1878 (41 & 42 Vict. c. 15), s. 13 (2). See *Scottish Widows' Fund*, §c. v. *Allan* (1900), 3 Fraser (Sc.), 129.

PROPERTY.—*Vide ante*, p. 157.

- „ in sect. 4 (1) of the Bankruptcy Act, 1883 (46 & 47 Vict. c. 53), means the *whole*, or substantially the *whole*, of the property as distinguished from the property referred to in sub-s. 1 (6). *Re Spackman* (1890), 24 Q. B. D. 728, 741, Fry, L.J.
- „ in Bankruptcy Act, 1883 (46 & 47 Vict. c. 52), s. 44. See *Re Roberts*, (1900) 1 Q. B. 123 (C. A.).
- „ REAL OR PERSONAL, in 24 & 25 Vict. c. 97 (Malicious Damage), s. 52, means something real and tangible, and does not include a mere legal right, nor an incorporeal hereditament, such as a herbage right in a town moor. *Laws v. Eltringham* (1881), 8 Q. B. D. 283.
- „ SETTLED, in 22 & 23 Vict. c. 61, s. 5; 41 & 42 Vict. c. 19, s. 3. See *Dormer v. Ward*, (1900) P. 130.
- „ WHICH SHALL NOT BE REDUCED INTO MONEY, in the Legacy Duty Act, 1796 (36 Geo. 3, c. 52), ss. 6, 22, must be read as if they were followed by the words “in the course of the administration of the estate,” and therefore includes pictures bequeathed *in specie*, but sold by the executors. *Att.-Gen. v. Dardier* (1883), 11 Q. B. D. 16.

PROSECUTE.—“With due diligence commences and prosecutes,” in the Patents, &c. Act, 1883 (c. 57), s. 32, does not mean prosecuting to a successful result. “Due diligence” in the phrase is consequently consistent with failure in, or discontinuance of, an action for infringement of a patent. *Colley v. Hart* (1890), 44 Ch. D. 179, North, J.

PROVABLE DEBT, in sect. 37 of the Bankruptcy Act, 1883 (46 & 47 Vict. c. 52), includes debts incurred to a creditor who has notice of an act of bankruptcy, although the fact of notice disqualifies the creditor from proving. *Buckwell v. Norman*, (1898) 1 Q. B. 622 (C. A.).

PUBLIC BODY, in the Public Bodies Corrupt Practices Act, 1889 (s. 7), “means any council of a county or county of a city or town, any council of a municipal borough, also any board, commissioners, select vestry, or other body which has power to act under and for the purposes of any Act relating to local government or the public health, or to poor law, or otherwise to administer money raised by rates in pursuance of any *public general Act*, but does not include any public body as above defined existing elsewhere than in the United Kingdom.”

PUBLIC BRIDGE.—See *R. v. Bucks* (1810), 12 East, 192.

„ COMPANY.—See *Company*.

„ OFFICE, in the Public Bodies Corrupt Practices Act, 1889, means any office or employment of a person as a member, officer, or servant of such public body. 52 & 53 Vict. c. 69, s. 7.

PUBLIC PLACE.—*Baird v. Mayor of Tunbridge Wells*, (1896) App. Cas. 434 (streets); *R. v. Wellard* (1884), 14 Q. B. D. 63 (vagraney); *Curtis v. Embury* (1872), L. R. 7 Ex. 369 (hackney carriages).

„ SERVICE, in 24 & 25 Vict. c. 96, s. 70 (Larceny), does not include a bailiff of the high bailiff of the county court, who is appointed, paid, and dismissible by the high bailiff. *R. v. Parsons* (1888), 16 Cox, C. C. 489; *R. v. Graham* (1875), 13 Cox, C. C. 57; *R. v. Glover* (1864), 9 Cox, C. C. 501.

„ THOROUGHFARE.—See *Nearest public thoroughfare*.

[PUBLISH, in 7 & 8 Vict. c. 12, s. 19, means “make public” in any way, and is not confined to publishing by printing. *Boucicault v. Chatterton* (1877), 5 Ch. D. 267, 279.]

PURCHASE, in 34 & 35 Vict. c. 31 (Trade Unions), s. 7, means “to buy,” and not “to acquire otherwise than by descent or escheat.” *In re Amos, Carrier v. Price*, (1891) 3 Ch. 157.

PURE AND WHOLESOME, in a Water Act, means “pure and wholesome in the mains or supply pipes of the undertakers.” *Milnes v. Mayor of Huddersfield* (1882), 10 Q. B. D. 124; 12 Q. B. D. 443; 11 App. Cas. 511.

QUARRY, in the Income Tax Act, 1842 (5 & 6 Vict. c. 35), s. 60, Sch. A. No. III. r. 1, means “a place where the material is got out in a large shape, like blocks, and not where it is got in small pieces, like coal and ironstone.” *Jones v. Cwmorthen Slate Co.* (1880), 5 Ex. D. 93, 95.

QUARTER SESSIONS.—The expression “quarter sessions,” when used in Acts prior to 1889, is usually, but superfluously, defined as including general sessions—*e.g.*, Weights and Measures Act, 1878 (c. 49), s. 70. The only effect of the inclusion is to exclude special and petty sessions.

„ COURT OF, as to administrative business, must be construed as meaning council of an administrative county or county borough, as the case may require. (51 & 52 Vict. c. 41, s. 78.)

QUARTER SESSIONS, as to judicial business and other matters not taken away from the court of quarter sessions by the Local Government Act, 1888, means the justices of any county, riding, parts, division, or liberty of a county (at large), or of any county of a city or county of a town in general or quarter sessions assembled, and includes the court of the recorder of a municipal borough having a separate court of quarter sessions. Int. Act, 1889 (c. 63), s. 13 (14), *post*, Appendix C.

Counties with more than one commission of the peace:—

*Yorkshire*, three—one for each riding, North, East, and West; also separate commissions for the liberties of Ripon, and of Cawood and Ottery.

*Lincolnshire*, three—one for each of its parts, Lindsey, Holland, and Kesteven.

*Cambridgeshire*, two—one for the liberty of the Isle of Ely, the other for the rest of the county.

*Northamptonshire*, two—one for the sake of Peterborough, the other for the rest of the county. The soke of Peterborough also has a separate commission of oyer and terminer and gaol delivery.

*Essex* used to have one for the liberty of Havering-atte-Bower (as to which see 46 & 47 Vict. c. 18, s. 18), the other for the rest of the county. But the liberty is now merged in the county.

*Suffolk and Sussex* have one commission, but two divisions, which, for judicial purposes, are separate counties in all but name.

All cities and towns which are counties in themselves are also municipal boroughs, and their justices, for quarter sessions purposes (except in the City of London), are superseded by the recorder or his deputy or assistant barrister. Mun. Corp. Act, 1882 (45 & 46 Vict. c. 50), ss. 162—169.

QUEEN ANNE'S BOUNTY.—Int. Act, 1889 (c. 63), s. 12 (16). See *post*, Appendix C.

RAILWAY, in 43 & 44 Vict. c. 42, s. 1 (5), "is used in its popular sense—viz., as meaning a way upon which trains pass by means of rails," and is not confined to "a railway worked by a railway company under statutory powers." *Doughty v. Firbank* (1883), 10 Q. B. D. 358; and see *Toronto Rail. Co. v. Reg.*, (1896) App. Cas. 551; *Williams v. L. N. W. R.*, (1900) 1 Q. B. 760 (C. A.).

RATE, levied under authority of an Act of Parliament within 47 & 48 Vict. c. 63; s. 3, does not include a rate levied by a dock company under its special Acts for services rendered. *Hutton v. Annan*, (1898) App. Cas. 289, 296.

[RATEABLE VALUE, in 30 & 31 Vict. c. 102, s. 6 (2), means "real rateable value," and does not mean the same as "rated at." *Cooke v. Butler* (1872), L. R. 8 C. P. 256.]

[RATE MADE, in 30 & 31 Vict. c. 102, s. 3, means rates made duly and formally, and not merely allowed. *Jones v. Bubbs* (1869), L. R. 4 C. P. 468.]

REAL RESIDENT, HOLDER, OR OCCUPIER, in sect. 1 of the Beerhouse Act, 1840 (3 & 4 Vict. c. 61). See *Nix v. Nottingham Justices*, (1899) 2 Q. B. 294 (C. A.).

REASONABLE EXCUSE, in the Bills of Sale Act, 1878, Amendment Act, 1882 (45 & 46 Vict. c. 43), s. 7. See *Ex parte Cotton* (1883), 11 Q. B. D. 301.

RECEIPT, in sect. 101 of the Stamp Act, 1891 (54 & 55 Vict. c. 39). *Attorney-General v. Carlton Bank*, (1899) 2 Q. B. 158.



**RECOGNISANCE.**—Where a statute requires a recognisance to be entered into within a time limited by the Act as a condition precedent to a right of appeal, a recognisance entered into after the time limited is not void, and can be estreated even in a case where the appeal has been successfully objected to on the ground that the recognisance was entered into too late. *R. v. Glamorgan-shire Justices* (1890), 24 Q. B. D. 675. A recognisance not good enough to give right of appeal is still estreatable for non-payment of costs of appeal actually prosecuted. As to what a recognisance is, see *In re Nottingham Corporation*, (1897) 2 Q. B. 502.

**RECOVERED**, in sect. 62 of the Salmon Fisheries Act, 1873 (36 & 37 Vict. c. 71), means the obtaining of a judgment on which the sum of money, penalty, or debt becomes payable; and in case of a limitation of time, applies to the date of institution of proceedings for recovery. *Morris v. Duncan*, (1899) 1 Q. B. 4.

„ **OR PRESERVED**, in the Solicitors Act, 1860 (23 & 24 Vict. c. 127), s. 28, includes money paid into Court as a condition of leave to defend an action, even in a case where the parties to the action compromise it behind the plaintiff's solicitor's back and agree that it shall be taken out of Court by the defendant. *Moxon v. Sheppard* (1890), 24 Q. B. D. 627. *Quære*—Does “recovered” mean recovered out of opponent's estate? Does “preserved” mean preserved out of the client's estate? See *Berrie v. Howitt* (1869), L. R. 9 Eq. 1; *Clover v. Adams* (1880), 6 Q. B. D. 622; *Twynam v. Porter* (1870), L. R. 11 Eq. 181; *Pinkerton v. Easton* (1873), L. R. 16 Eq. 490. It does not include property recovered or preserved in criminal proceedings. *Re Humphreys*, (1898) 1 Q. B. 520, 525.

**REDUCTION OF SHARE.**—*Re Gatling Gun, Ltd.* (1890), 43 Ch. D. 628. *Quære*, whether Act empowers Court to sanction reduction of all shares only, or of some and not the rest? See *Re Barrow Hæmatite Co.* (1888), 39 Ch. D. 582; *Re Quebrada Land Co.* (1889), 40 Ch. D. 363; *Re Agricultural Hotel Co.*, (1891) 1 Ch. 396; *contra*, *Re Union Plate Glass Co.* (1889), 42 Ch. D. 513.

**REFUSE OF TRADE, MANUFACTURE, OR BUSINESS** does not include the ordinary refuse of a hotel in sects. 30, 33, 141 of the Public Health (London) Act, 1891 (54 & 55 Vict. c. 76). *Mayor, &c. of Westminster v. Gordon Hotels, Ltd.*, (1906) 2 K. B. 39.

2 **REGISTER TONNAGE**, in the Merchant Shipping Act, 1894 (57 & 58 Vict. c. 60), ss. 3, 503. *The Brunel*, (1900) P. 24 (C. A.).

**REGISTRATION**, in the Patents Act, 1883 (c. 57), s. 65, does not mean general registration in respect of all goods as to which a trade-mark can be registered, but registration for particular goods or classes of goods, and the power to register is limited to goods in any particular class upon which the person applying for registration has in fact used the mark. *Hart v. Colley* (1890), 44 Ch. D. 193, North, J.

**RELEASE or RENUNCIATION . . . ON SALE**, in the Stamp Act, 1891 (54 & 55 Vict. c. 39), considered. *G. N. R. v. Inland Revenue Commissioners*, (1899) 2 Q. B. 652.

REMUNERATION, in 31 & 32 Vict. c. 110, s. 8 (7), means a *quid pro quo*, and is a wider term than "salary," though not (per Quain, J.) so wide a term as "emolument." *R. v. Postmaster-General* (1876), 1 Q. B. D. 658, 665; 3 Q. B. D. 428, 431.

\* RENT [in 16 & 17 Vict. c. xxii. s. 79, held to mean actual "annual value." *Sheffield Water Co. v. Bennett* (1872), L. R. 7 Ex. 409, 421, affirmed (1873), L. R. 8 Ex. 196.] *Vide ante*, p. 481.

„ [PAYABLE, in 30 & 31 Vict. c. 142, s. 11 (County Courts), meant the rent payable as between the litigant parties, and not any rent that might be paid by a sub-lessee. *Brown v. Cocking* (1868), L. R. 3 Q. B. 672,] or to a superior landlord. *Elston v. Rose* (1869), L. R. 4 Q. B. 4. See now 51 & 52 Vict. c. 43, s. 59.

REPAIRS, in 58 Geo. 3, c. 45, s. 70 (Church Building), is not to be construed in the strict sense of repairs to the fabric of the church, but includes expenses necessary for the proper and decent performance of divine service. *R. v. Consistorial Court of London* (1861), 2 B. & S. 361.

[REPEAL, in 46 Geo. 3, c. 139, s. 1 (Excise), held not to be used in its ordinary sense, but means merely "suspend the operation of." *R. v. Rogers* (1809), 10 East, 573.]

REPUTED OWNERSHIP, in the Bankruptcy Act, 1883 (46 & 47 Vict. c. 52, s. 44). See *Sharman v. Mason*, (1899) 2 Q. B. 679.

„ [THIEF, in 3 Geo. 4, c. 55, s. 21, held to apply to persons generally reputed to be thieves, and not to persons suspected of any particular felony. *Cowles v. Dunbar* (1827), 2 C. & P. 567.] See now Vagrancy Act, 1824 (5 Geo. 4, c. 83), s. 3.

RESIDE, [in 7 & 8 Vict. c. 101 (Poor Law), s. 2, does not mean "coming to a place for the purpose of applying to another tribunal." *R. v. Myott* (1863), 32 L. J. M. C. 138.]

„ in Acts relating to the franchise, implies possession of a sleeping apartment at least, but not necessarily uninterrupted use thereof, provided that the right to the sole use continues for the qualifying period. See *Bond v. St. George's Hanover Square Overseers* (1871), L. R. 6 C. P. 312. *Barnett v. Hickmott*, (1895) 1 Q. B. 691.

RESIDENCE, in a statute, "has no actual definite technical meaning, but you may construe it in every case in accordance with the object and intent of the Act in which it occurs." *Ex parte Breull* (1881), 16 Ch. D. 484, 487, James, L.J.

„ means domicile or home, but does not include place of business. *Lambe v. Smythe* (1846), 15 M. & W. 433; *Maybury v. Mudie* (1847), 5 C. B. 283.

„ in the Poor Law Acts, 9 & 10 Vict. c. 66, s. 1, and 24 & 25 Vict. c. 55, s. 1, "does not, more than the word 'living,' imply occupation of a given house and sleeping in it. . . . If [a person] remained in a parish, sleeping in the open air, that would

be a residence within the meaning of these statutes." *R. v. St. Leonard* (1865), 6 B. & S. 788, per Cockburn, C.J.; cf. *West Ham Union v. Cardiff Union*, (1895) 1 Q. B. 766; *Blackwell v. England* (1858), 8 E. & B. 56.

**RESIDENCE**, in Bills of Sale Act, 1878 (41 & 42 Vict. c. 31), s. 10, generally the place where a man lives with his family, where he may be expected to be when his business does not call him away, where he passes the night, and in respect of which he pays rates. *Greenham v. Child* (1889), 24 Q. B. D. 29.

**RESIDING IN THE UNITED KINGDOM**, in sect. 2, and Sched. D. of the Income Tax Act, 1842 (5 & 6 Vict. c. 35). *De Beers Consolidated Mines Co. v. Howe*, (1905) 2 K. B. 612 (C. A.).

**REVERSION**, in 2 & 3 Will. 4, c. 71, s. 8, is a well-known legal expression, and its meaning, and the distinction between it and a remainder are clearly pointed out in Williams on Real Property (14th ed.), p. 255. *Symons v. Leaker* (1885), 15 Q. B. D. 629, 632, per Field, J.

**REVOCATION**, what is, within Wills Act, 1837 (7 Will. 4 & 1 Vict. c. 26), s. 20. *Mills v. Millward* (1889), 15 P. D. 20, Butt, J. See *In bonis Hodgkinson*, (1893) P. 339 (C. A.).

**RIGHT ACQUIRED**, in sect. 169 of the Bankruptcy Act, 1883, does not mean a right to obtain an adjudication of bankruptcy, but such rights as a right to issue an *elegit*. *Hough v. Windus* (1884), 12 Q. B. D. 224.

**ROAD**, in 41 & 42 Vict. c. 77 (Highways and Locomotives), s. 13, means any portion of a road, as well as a whole road, and not exclusively the whole of any road subject to a turnpike trust. *Mayor, &c. of Rochdale v. Lancashire Justices* (1883), 8 App. Cas. 494.

„ in sect. 32 of the Railway Clauses Act, 1845 (8 & 9 Vict. c. 20), does not include railroad. *Morris v. Tottenham, &c. Rail. Co.*, (1892) 2 Ch. 47.

**ROAD-SIDE WASTES**, in the Local Government Act, 1888 (51 & 52 Vict. c. 41), s. 11 (1), are strips of grass bordering the metalled parts of a main road, as distinguished from the road itself. *Curtis v. Kesteven C. C.* (1890), 45 Ch. D. 504.

**ROYALTIES**, in sect. 109 of the British North America Act, 1867, includes all revenues arising from the prerogative rights of the Crown in connection with lands, mines, and minerals. *Att-Gen. of Ontario v. Mercer* (1883), 8 App. Cas. 767, as interpreted in *Cooper v. Stuart* (1889), 14 App. Cas. 305. Cf. *Att-Gen. v. British Museum Trustees*, (1903) 2 Ch. 598.

**RULES OF COURT**, defined in Int. Act, 1889 (c. 63), s. 14, *post*, Appx. C.

**SALARY**, in 46 & 47 Vict. c. 52, s. 53 (Bankruptcy). *Re Jones, Ex parte Lloyd*, (1891) 2 Q. B. 231; *Re Hutton, Ex parte Benwell* (1884), 14 Q. B. D. 301.

SALE BY RETAIL, in the Licensing Act, 1872 (c. 94), s. 3, does not apply to the supply at a fixed price by the manager of a *bona fide* club (not licensed for the sale of intoxicating liquors) to a member for consumption off the club premises. *Graff v. Evans* (1882), 8 Q. B. D. 373.

[SALEABLE UNDERWOODS, in sect. 1 of the Poor Law Act, 1601 (43 Eliz. c. 2), applies to any succession of profitable crops cut from the same roots, whatever the description of tree may be, and whatever may be the intervals that elapse between the cutting of the successive crops. *Lord Fitzhardinge v. Pritchett* (1867), L. R. 2 Q. B. 135.]

SAME.—See *Such*.

” STREET (IN THE), in the Public Health (Buildings in Streets) Act, 1888 (51 & 52 Vict. c. 72), s. 3, is not to be decided by the postal direction, but by the distance of the house from the roadway, and its situation. *Att.-Gen. v. Edwards*, (1891) 1 Ch. 194.

SCAFFOLDING, in the Workmen's Compensation Act, 1897 (c. 37). See *Hoddinott v. Newton, Chambers & Co.*, (1901) A. C. 49; *O'Brien v. Dobbie*, (1905) 1 K. B. 346.

SCIENCE, in the Customs and Inland Revenue Act, 1885 (48 & 49 Vict. c. 51), s. 11, does not mean only universal science, or science generally, but includes mechanical science, as employed in civil engineering. *Commissioners of Inland Revenue v. Forrest* (1890), 15 App. Cas. 334, 354, Lord Macnaghten. The exemption in the Act referred to extends to societies of professional men formed for the extension of the particular branch of science with which their profession is concerned, but not to societies for promoting the professional interests. *Re College of Surgeons, England*, (1899) 1 Q. B. 871.

SCOTCH EDUCATION DEPARTMENT.—See Int. Act, 1889, s. 12 (7), *post*, Appendix C.

SEA, in 48 Geo. 3, c. 75, s. 1 (Burial), does not include navigable tidal rivers. *Woolwich Overseers v. Robertson* (1881), 6 Q. B. D. 654.

SEAMAN, in sect. 13 of Employers and Workmen Act, 1875. See *Corbett v. Pearce*, (1904) 2 K. B. 423.

SECRETARY OF STATE.—Defined in Int. Act, 1889 (c. 63), s. 12 (3), *post*, Appx. C., which transfers to a general Act an abbreviation previously inserted in the interpretation clause of Acts giving authorities or duties to any Secretary of State. In some Acts the meaning is restricted by definition (1869 (Diplomatic Service), c. 43, s. 3) to the Principal Secretary who is entrusted with the seals or performs the duties of the department of Foreign Affairs.

SECURED CREDITOR, in Bankruptcy Act, 1883 (c. 52), ss. 9, 168, does not include a judgment creditor who has obtained the appointment of a receiver of the property of the judgment debtor. *Re Dickinson* (1889), 22 Q. B. D. 187.

SECURITY FOR PAYMENT OF MONEY.—See *Valuable Security* and *Chattel or valuable security*.

SELL, in Pharmacy Act, 1868 (c. 121), s. 15, refers to the actual conduct and management of the sale of the poisons mentioned in the Act, and excludes selling by an unqualified assistant unless upon each sale he acts under the personal superintendence (and not merely the general authority) of a qualified employer or his qualified assistant. *Pharmaceutical Society v. London and Provincial Supply Association* (1880), 5 App. Cas. 857, Lord Selborne; *Same v. Wheeldon* (1890), 24 Q. B. D. 683, Hawkins, J.

NOTE.—“Sell” refers to the particular transaction; “keep open shop for” would strike the master only, and the offence would be completed without proof of sale.

SELLER, in the Pharmacy Act, 1868 (c. 121), s. 17, is “the person who actually conducts and controls the business of sale, although not necessarily the person by whose hand the sale is made.” It does not include a chemist whose name is on the poison sold, unless he retails the article. *Templeman v. Trafford* (1881), 8 Q. B. D. 397; *Pharmaceutical Society v. Wheeldon* (1890), 24 Q. B. D. 683. As to the meaning of the word in sect. 15 of the same Act, see *Pharmaceutical Society v. White*, (1900) 1 Q. B. 454; affirmed, (1901) 1 K. B. 603.

SEPARATE DWELLINGS, in sect. 11 of the Revenue Act, 1903 (3 Edw. 7, c. 46), does not include buildings constructed for the occupation of the working classes consisting of a number of cubicles for the sleeping accommodation of the occupants. *London County Council v. Cook*, (1906) 1 K. B. 278, Walton, J.

SEQUESTRATION, in the Companies Act, 1862 (c. 89), s. 163, includes sequestration in the Scotch as well as in the English legal meaning of the word. *Re Wanzer, Ltd.*, (1891) 1 Ch. 305.

SERVANT, in the Wages Attachment Abolition Act, 1870 (33 & 34 Vict. c. 30), s. 1, does not include the secretary of a trading company. *Gordon v. Jennings* (1882), 9 Q. B. D. 45.

„ [in the Railway and Canal Traffic Act, 1854 (17 & 18 Vict. c. 31), s. 7, embraces not merely servants of a railway company properly so called, but also the agents whom a company employs to do for it what it has contracted to do. *Doolan v. Midland Rail. Co.* (1877), 2 App. Cas. 792, 810.]

SESSIONS.—See *General Sessions*.

SETTING OUT OF SOLDIERS in 43 Eliz. c. 3. *Re Good*, (1905) 2 Ch. 60, Farwell, J.

SETTLEMENT.—Whether an instrument fell within the Stamp Act, 1870 (33 & 34 Vict. c. 97), s. 3, did not depend on the definiteness, vesting, or contingency of the interest dealt with by the instrument in question, but on the definiteness and certainty of the

sum of stock dealt with by the instrument. *Onslow v. Commissioners of Inland Revenue*, (1891) 1 Q. B. 239. See now Stamp Act, 1891 (54 & 55 Vict. c. 39), s. 104.

**SETTLEMENT** in the Finance Act, 1894 (57 & 58 Vict. c. 30), means any instrument, whether relating to real property or personal property, which is a settlement within the meaning of sect. 2 of the Settled Land Act, 1882 (45 & 46 Vict. c. 38), or if it related to real property would be a settlement within the meaning of that section, and includes a settlement effected by a private trust. See *Re Maryon Wilson*, (1900) 1 Ch. 565; *Re Mundy and Roper's Contract*, (1899) 1 Ch. 275 (C.A.); *Re Bishop of Bath and Wells*, (1899) 2 Ch. 138; *Re Keck and Hart's Contract*, (1898) 1 Ch. 617; *Inland Revenue Commissioners v. Priestley*, (1901) App. Cas. 208; *Re Phillimore's Estate*, (1904) 2 Ch. 460; *Re Marshall's Settlement*, (1905) 2 Ch. 325, Eady, J.

**SEVERED**, in the Lands Clauses Act, 1845 (8 & 9 Vict. c. 18), ss. 49, 63, does not mean that the part taken and the part left were in actual contiguity, but that the land taken can no longer be treated by the landowner as part of the tenements which until it was taken he held along with it. *Cowper Essex v. Acton* L. B. (1889), 14 App. Cas. 153, 167, Lord Watson.

**SEWER**, in Public Health, &c. Act, 1875 (c. 55). See *Kinson Pottery Co. v. Poole (Mayor, &c.)*, (1899) 2 Q. B. 41; *Bradford v. Eastbourne Corporation*, (1896) 2 Q. B. 205; *Wilkinson v. Llandaff*, &c. R. D. C., (1903) 2 Ch. 695.

„ in Metropolis Management Acts. See *Shoreditch Vestry v. Phelan*, (1896) 1 Q. B. 533; *Bethnal Green Vestry v. London S. B.*, (1898) App. Cas. 190; *Geen v. Newington Vestry*, (1898) 2 Q. B. 1; *Silles v. Fulham Borough Council*, (1903) 1 K. B. 829.

„ FOR PRIVATE PROFIT, in the Public Health Act, 1875 (c. 55). See *Croysdale v. Sunbury-on-Thames U. D. C.*, (1898) 2 Ch. 515; *Sykes v. Sowerby U. D. C.*, (1900) 1 Q. B. 584; *L. N. W. R. & G. W. R. v. Runcorn U. D. C.*, (1898) 1 Ch. 561.

**SHALL**.—*Vide ante*, p. 152.

**SHARES**.—See *Issue of shares*.

„ in a company. *Mason v. Motor Traction Co.*, (1905) 1 Ch. 419, Buckley, J.

„ [ISSUED, in 34 & 35 Vict. c. 4, s. 2, applies to “the period when the company [which issues the shares] parts with the control or power over the shares, the period, in fact, when the property vests in the allottee. *Grenfell v. Inland Revenue Commissioners* (1876), 1 Ex. D. 242, 250.]

**SHERIFF**, in the Bankruptcy Act, 1883 (46 & 47 Vict. c. 52), s. 168, does not include his man in possession. *Bellyse v. M'Ginn*, (1891) 2 Q. B. 227.

SHERIFF, as respects Scotland, includes sheriff substitute. Int. Act, 1889 (c. 63), s. 28, *post*, Appendix C.

„ CLERK, in Acts relating to Scotland, includes steward clerk. Int. Act, 1889 (c. 63), s. 7, *post*, Appendix C.

SHERIFFDOM, SHIRE, in Acts relating to Scotland, includes stewartry. Int. Act, 1889 (c. 63), s. 7, *post*, Appendix C.

SHIP.—Defined (1) Merchant Shipping Act, 1894 (57 & 58 Vict. c. 60), s. 742; (2) Foreign Enlistment Act, 1870. See *Mayor, &c. of Southport v. Morriss*, (1893) 1 Q. B. 359; *Gas Float Whitton*, No. 2, (1897) App. Cas. 337.

SHIPBUILDING YARD, in Workmen's Compensation Act, 1897 (60 & 61 Vict. c. 37). See *Spencer v. Livett, Frank & Son*, (1900) 1 Q. B. 498.

SHIRE, in Scotland. See Int. Act, 1889, s. 7, *post*, Appendix C.

SHOP, in the Shop Hours Regulation Act, 1892 (55 & 56 Vict. c. 62). See *Savoy Hotel Co. v. L. C. C.*, (1900) 1 Q. B. 665.

„ [in 10 & 11 Vict. c. 14, s. 13, “imports something more than a mere place for sale; it imports a place for storing also, where the nature of the commodities admits of storing.” *Pope v. Whalley* (1865), 34 L. J. M. C. 78.]

SICKNESS.—See *Permanent sickness*.

SIGNATURE, in the Wills Act, 1851 (7 Will. 4 & 1 Vict. c. 26), s. 21, includes subscription by initials only. *Re Blewitt* (1880), 5 P. D. 116.

SIGNED, [in 6 & 7 Vict. c. 18, s. 17 (Parliamentary Registration), means “affixing a signature, not by the hand alone, but by the hand coupled with some instrument,” and there is “no distinction between using a pen or a pencil and using a stamp.” *Bennett v. Brumfitt* (1867), L. R. 3 C. P. 28, 31]. But see *R. v. Cowper* (1890), 24 Q. B. D. 533; *France v. Dutton*, (1891) 2 Q. B. 208.

„ in 5 & 6 Will. 4, c. 76, s. 32, did not necessitate the Christian names being written in full, but initials are sufficient. *R. v. Avery* (1852), 18 Q. B. 584. And see *Writing*, *ante*, p. 151.

SILVER.—See *Gold or silver*.

[SINGLE WOMAN, in 7 & 8 Vict. c. 101, s. 2 (Poor Law), extends to a married woman who is living apart from her husband. *R. v. Pilkington* (1853), 2 E. & B. 546.]

SINGULAR.—*Vide ante*, p. 149.

SITE, as used in a by-law made under 41 & 42 Vict. c. 32, s. 16, held to mean “the space which will necessarily be taken up when the house and walls come to be built.” *Blashill v. Chambers* (1885), 14 Q. B. D. 479, 485. See now 57 & 58 Vict. c. cxxiii. s. 43.

SKETCH, unless the context otherwise requires, "includes any photograph or other mode of representation of any place or thing." Official Secrets Act, 1889 (c. 52), s. 8.

"SOCIETY, established exclusively for the purposes of science, literature, or the fine arts," in 6 & 7 Vict. c. 36, s. 1. See *Royal College of Music v. Westminster Vestry*, (1898) 1 Q. B. 304, 809 (C. A.).

[SOIL, in 45 Geo. 3, c. xcii., is used as distinct from the word "land," and as equivalent to "surface," though *primâ facie* "soil" would include everything above or below it. *Pretty v. Solly* (1859), 26 Beav. 612.]

SOLE TRUSTEE, in 13 & 14 Vict. c. 60, ss. 2, 23, was not confined to a single trustee, but meant "any number of trustees who are solely entitled to any trust property." *Hyatt's Trusts* (1882), 21 Ch. D. 846, Chitty, J. See now 56 & 57 Vict. c. 53.

SOLEMNLY, as used in 29 & 30 Vict. c. 19 (Parliamentary Oaths), s. 3, does not mean "religiously," but means "with due solemnities." *Att.-Gen. v. Bradlaugh* (1885), 14 Q. B. D. 667, 701, Brett, M.R.

SOLICITOR (ACTING AS), in the Solicitors Act, 1843 (6 & 7 Vict. c. 73), s. 2, the Solicitors Act, 1860 (23 & 24 Vict. c. 127), s. 26 (*cf. Re Hall* (1893), 69 L. T. 385), does not include the case of a law stationer, confidential agent, or process server who settles an affidavit. *In re Louis*, (1891) 1 Q. B. 649.

SOVEREIGN, THE.—See Int. Act, 1889, s. 30, *post*, Appendix C.

SPIRITS.—*Vide ante*, p. 153.

STATUTES, in 11 & 12 Vict. c. 43, s. 35, is equivalent to "enactments." *R. v. Bakewell* (1857), 7 E. & B. 851. *Vide ante*, p. 52.

STATUTORY DECLARATION.—See Int. Act, 1889, s. 21, *post*, Appendix C.

STOCK, in the Trustee Act, 1893 (56 & 57 Vict. c. 53), includes "fully paid-up shares." See sect. 50.

STORY (TOPMOST), in the Metropolitan Building Act, 1855 (18 & 19 Vict. c. 122), ss. 83, 85, Sch. 7, did not necessarily mean a room enclosed by four vertical walls, but included floors built in a sloping roof. *Foot v. Hodyson* (1890), 25 Q. B. D. 160. Some local Acts—*e.g.*, Hastings Improvement Act, 1885 (c. cxvii.)—contain a specific definition to make this clear.

STREET, in the London Building Act, 1894 (57 & 58 Vict. c. ccxiii.), s. 5. See *Armstrong v. London County Council*, (1900) 1 Q. B. 416; *London County Council v. Dixon*, (1899) 1 Q. B. 496.

„ See definitions in Towns Police Clauses Act, 1847; Telegraph Act, 1863; Metropolitan Streets Act, 1867; Electric Lighting Act, 1882; Housing of Working Classes Act, 1890; Private Street Works Act, 1892.



STREET, in Public Health Act, 1875 (c. 55), "must receive the popular meaning existing at the time when the Act passed. With regard to the width, it is the width between the houses. With regard to the depth, it is what may be called the area of ordinary user existing at that time, and nothing beyond or below it." Per Brett, M.R., in *Wandsworth D. B. W. v. United Telephone Co.* (1884), 13 Q. B. D. 904, 914, and see *Baird v. Mayor, &c. of Tunbridge Wells*, (1896) App. Cas. 434.

„ in sect. 149, means the public highway, whether footway or carriage-way.

„ in sect. 157, means a roadway with buildings on each side, discontinuous or not.

„ in the Prevention of Cruelty to Children Act, 1904 (4 Edw. 7, c. 15), ss. 2, 23, "includes any highway or other public place, whether a thoroughfare or not."

„ in the Private Street Works Act, 1892 (c. 57), ss. 5, 6. See *Rishton v. Haslingden (Mayor, &c.)*, (1898) 1 Q. B. 294, and cases there collected.

„ (NEW).—A roadway beside which buildings have for the first time been constructed on one or both sides. *Robinson v. Barton-Eccles L. B.* (1883), 8 App. Cas. 798, 803.

STRUCTURAL ALTERATIONS, in sect. 11 of the Licensing Act, 1902 (2 Edw. 7, c. 28). *Smith v. Portsmouth JJ.*, (1906) 2 K. B. 229 (C. A.); *London County Council v. Adrds. Co.*, (1904) 2 K. B. 886.

STRUCTURE.—See *London County Council v. Schewzik*, (1905) 2 K. B. 695.

SUBJECT TO MILITARY LAW, in the Army Act (44 & 45 Vict. c. 58). See *Marks v. Frogley*, (1898) 1 Q. B. 888.

SUBMISSION, in the Arbitration Act, 1889 (c. 49), s. 27, "unless the contrary intention appears," means "a written agreement to submit present or future differences to arbitration, whether an arbitrator is named therein or not."

SUBSCRIBED, in sect. 1 of the Lodgers' Goods Protection Act, 1871 (34 & 35 Vict. c. 79). *Godlonton v. Fulham and Hammersmith Property Co.*, (1905) 1 K. B. 431.

SUCCESSION.—See *Harding v. Commissioners of Stamps for Queensland*, (1898) App. Cas. 763, 769; *Lord Wolverton v. Att.-Gen.*, (1898) App. Cas. 535.

SUCCESSOR, in the Death Duties Acts. *Lord Wolverton v. Att.-Gen., ubi sup.*

[SUCH.—There is no special rule as to the way in which words of reference, like "such" or "same," should be understood when used in statutes. "It is an ordinary rule," said Blackburn, J., in *Eastern Counties Rail. Co. v. Marriage* (1861), 9 H. L. C. 32, at p. 37, "not so much of law as of the grammatical construction of the English language, that words of relation *primâ facie*

refer to the nearest antecedent." The word "*idem*," it is said by Lord Coke in Inst. 20.b, "*semper proximo antecedenti refertur*." But, said Channell, B. (p. 43), "no meaning of this sort has been given to the word 'such,' and the notion of confining the reference made by the use of that word to the particular use described in the immediate antecedent has not been followed, even where, by so confining the words, no violence would have been done to the context, nor any repugnancy have arisen." So Lord Coke, in his reading of the Statute of Marlbridge, 2 Inst. c. 6, s. 6, when commenting upon the words "*per hujusmodi fraudem*," says: "By these words is to be understood 'such in mischief and such in inconvenience, and therefore all other fraudulent feoffments tending to the same end are within the statute' . . . and so is this word [such] oftentimes taken in other statutes." Thus, in *Re Betts' Patent* (1862), 1 Moore, P. C. N. S. 49, it was held that the word "such" in the proviso to sect. 25 of 15 & 16 Vict. c. 83 (which enacted that, "provided always no letters patent for any invention for which any *such* patent shall have been obtained in any free country . . ."), "referred to the entire description of the patents mentioned in the foregoing part of the section," and not merely to the last-mentioned of them. (Cf. *Re Blake's Patent* (1873), L. R. 4 P. C. 537.) And in *Stone v. Mayor, &c. of Yeovil* (1876), 2 C. P. D. 99, it was held that, when by sect. 9 of the Lands Clauses Act, 1845 (8 & 9 Vict. c. 18), it is enacted that "the compensation to be paid for any lands to be purchased or taken from any party under any disability or incapacity . . . and the compensation to be paid for any permanent damage or injury to any *such* lands, shall," &c., the words "such lands" related to "any lands belonging to parties under disability."]

SUDDEN AND URGENT NECESSITY, in sect. 54 of the Poor Law Act, 1834 (4 & 5 Will. 4, c. 76), does not include poverty caused by a general strike of able-bodied workmen. *Att.-Gen. v. Merthyr Tydfil Union*, (1900) 1 Ch. 516 (C. A.).

SUFFER, in a statute creating an offence, includes cases in which the act forbidden is done through the negligence or by the connivance of the person charged, although direct knowledge by him of the contravention of the statute is not proved. *Bond v. Evans* (1888), 21 Q. B. D. 249. And see *ante*, p. 438.

„ is the same as "permit" in the Licensing Act, 1872 (35 & 36 Vict. c. 94), ss. 13, 16, 17. (Same case.)

SUIT DEPENDING, [used in 5 & 6 Will. 4, c. 54, s. 1, is not used in the technical sense of *lis pendens*, and "is not to be understood in any other than its ordinary and popular sense." *Sherwood v. Ray* (1837), 1 Moore, P. C. 353.]

„ PETITION, OR OTHER PROCEEDING, in the Charitable Trusts Act, 1853 (c. 137), s. 17, does not apply (1) to actions brought to enforce common law rights in contract or tort, such as an action for wrongful dismissal by the master of a charity school; nor (2) to suits intended only to obtain equitable relief in respect of

common law rights. *Rendall v. Blair* (1890), 45 Ch. D. 139, Bowen, L.J..

**SUMMARY JURISDICTION (COURT OF)**, means any justice or justices of the peace or other magistrate, by whatever name called, to whom jurisdiction is given by, or who is authorized to act under, the sections of Acts in England, Wales, or Ireland, and whether acting under Summary Jurisdiction Acts or any of them, or under any other Act, or by virtue of his commission, or under the common law. Int. Act, 1889 (c. 63), s. 13 (11), *post*, Appx. C. This definition does not include justices acting for the grant of licences under Licensing Acts. *Boulter v. Kent Justices*, (1897) App. Cas. 556. *Cf. Royal Aquarium Co. v. Parkinson*, (1892) 1 Q. B. 431; *R. v. London County Council*, (1892) 1 Q. B. 190; nor justices sitting to review jury lists: *Hagmaier v. Willesden Overseers*, (1904) 2 K. B. 316. But it has been held to include justices sitting to grant process for the recovery of poor-rate. *Fourth City Mutual Building Society v. East Ham (Churchwardens)*, (1892) 1 Q. B. 661.

**SUMMARY JURISDICTION ACTS** defined. Int. Act, 1889, s. 13, *post*, Appendix C.

**SUNDAY** is not a *dies non* in computing time in accordance with an Act of Parliament. "Where," said Hill, J., in *Ex parte Simkin* (1859), 2 E. & E. 396, "an Act of Parliament gives a specified number of days for doing a particular act, and says nothing about Sunday, the days are consecutive days including Sunday." *Cf. London County Council v. South Metropolitan Gas Co.*, (1904) 1 Ch. 76 (C. A.). But see *Peacock v. R.* (1858), 4 C. B. N. S. 266, 268, note (a). In certain Acts provision is made for the case where the day prescribed falls on a Sunday. Bills of Exchange Act, 1882, s. 92; Municipal Corporations Act, 1882, s. 230; Local Government Act, 1894, s. 73.

.. in sect. 1 of the Sunday Closing (Wales) Act, 1881 (44 & 45 Vict. c. 61), has its ordinary meaning, and not that given to it by sect. 3 of the Licensing Act, 1872 (35 & 36 Vict. c. 94). *Forsdike v. Colquhoun* (1883), 11 Q. B. D. 71.

**SUPERFLUOUS LANDS** [in the Lands Clauses Act, 1845 (8 & 9 Vict. c. 18), s. 127, means "land not required for the purposes of the undertaking"—that is to say, not "land not demanded," but "land no longer necessary." *Great Western Railway v. May* (1875), L. R. 7 H. L. 283]. In *Re Metropolitan District Railway and Cosh* (1880), 13 Ch. D. 617, it was held that "land" mentioned in sect. 127 "means land properly and ordinarily so called, and does not apply to a mere easement or a slice of land taken horizontally."

**SUPREME COURT** defined. Int. Act, 1889, s. 13 (1), *post*, Appendix C.

"**SUSPEND PAYMENT**," in the Bankruptcy Act, 1883. See *Crook v. Morley*, (1891) App. Cas. 316.

**SWEAR**.—See *Oath*, *ante*, p. 151.

TAKEN FOR THE PURPOSES OF THE WORKS, in Lands Clauses Act, 1845 (8 & 9 Vict. c. 18), ss. 2, 133, applies to houses purchased outside the limits of deviation and not under the provisions of a private railway Act, but in order to buy off opposition to the passing of the Act. *Putney Overseers v. L. & S. W. R.*, (1891) 1 Q. B. 182, 440.

„ IN EXECUTION, in 35 Geo. 3, c. 73, s. 195. See *St. Marylebone Vestry v. Sheriff of London*, (1900) 1 Q. B. 111.

[TAXED CART, in 15 & 16 Vict. c. cliv. s. 27, held to mean a taxed cart as defined by 43 Geo. 3, c. 161, Sch. D., No. 4, and not to include any cart upon which a tax has been paid. *Williams v. Lear* (1872), L. R. 7 Q. B. 285.]

TEAM, in the Highway Act, 1835 (5 & 6 Will. 4, c. 50), ss. 35, 46, does not imply, besides horses, a cart or vehicle of some kind. *Vide Duke of Marlborough v. Osborn* (1864), 5 B. & S. 67, 73.

TELEGRAPH, in the Telegraph Acts, 1863, 1869, is “wide enough to cover every instrument which may ever be invented which employs electricity transmitted by a wire as a means for conveying information.” *Att.-Gen. v. Edison* (1881), 6 Q. B. D. 241.

TENANT, in sect. 57 of the Agricultural Holdings Act, 1883, meant tenant claiming compensation under the Act. *Newby v. Eckersley*, (1899) 1 Q. B. 465 (C. A.). *Re Pearson and T'Anson*, (1899) 2 Q. B. 618. See now 63 & 64 Vict. c. 50.

TENEMENT [in 8 Hen. 6, c. 7, held to include a toll. *Wadmore v. Dear* (1871), L. R. 7 C. P. 212, 224.]

„ in 48 Geo. 3, c. 55 (House Tax), and 41 & 42 Vict. c. 15, s. 13, means a legal house as distinguished from an ordinary house, and includes a set of chambers or a flat. *Yorkshire Insurance Co. v. Clayton* (1881), 8 Q. B. D. 421. See *Hoddinot v. Home and Colonial Stores*, (1896) 1 Q. B. 169; *Grant v. Langston*, (1900) App. Cas. 383.

„ in the Franchise Acts (2 & 3 Will. 4, c. 45, s. 27, and 48 & 49 Vict. c. 3, s. 5), includes stalls and stands in a market for which rent is paid, if the areas for which the rent is paid are fixed. *Hall v. Metcalf*, (1892) 1 Q. B. 208.

[TERM, meaning the periods into which the legal year used to be divided, was frequently used before the passing of the Judicature Acts (by which this division of the year was abolished) “as a measure for determining the time at which an act should be done,” and, consequently, this division of the year (although now abolished) “may continue to be referred to for the same or a like purpose.” *College of Christ v. Martin* (1877), 3 Q. B. D. 18.]

TESTAMENTARY EXPENSES, held to include estate duty under the Finance Act, 1894 (57 & 58 Vict. c. 30). *Re Clemow*, (1900) 2 Ch. 182.

THIEF.—See *Reputed thief*.

THINGS IN ACTION, as used in the Bankruptcy Act, 1883 (46 & 47 Vict. c. 52), s. 41 (iii.). See *Colonial Bank v. Whinney* (1885), 30 Ch. D. 261.

TIDAL LANDS.—Defined, 26 & 27 Vict. c. 92, s. 3.

TIME, when mentioned in a statute, is to be reckoned, said Denman, J., from the first day “any part of which is occupied in the particular business which is to endure for a certain number of days in order to fulfil any requirement of the law.” *Migotti v. Colvill* (1879), 4 C. P. D. 233. For “the doctrine,” said the Court in *Edwards v. R.* (1854), 9 Ex. 631, “that judicial acts are to be taken always to date from the earliest minute of the day in which they are done, stands upon ancient and clear authority.” See also *Day; Month; Sunday*.

„ as to mode of computing time limited within which powers may be exercised. *Goldsmiths' Co. v. West Metropolitan Rail. Co.*, (1904) 1 K. B. 1.

„ OF DAY.—“The true time at any place,” said Pollock, C.B., in *Curtis v. Marsh* (1858), 28 L. J. Ex. 38, “is the ‘mean time’ (as astronomers say) at that place, not Greenwich time, and it is not competent to the authorities of a place to determine that the true time for legal purposes shall be the time at any other place.”

„ By 43 & 44 Vict. c. 9, time, when mentioned in any Act of Parliament, deed, or legal instrument, shall mean Greenwich mean time in England and Dublin mean time in Ireland. “Sunset” is not an expression of time within the meaning of this Act. *Gordon v. Cann* (1899), 68 L. J. Q. B. 434.

„ TO TIME (FROM).—See *Benyon v. Benyon* (1890), 15 P. D. 54, 57. See *Thomasset v. Thomasset*, (1894) 2 Q. B. 295.

[TITHES, in 1 & 2 Vict. c. 110, s. 13, is confined to lay tithes. *Hawkins v. Gathercole* (1855), 24 L. J. Ch. 322.]

TITLE, ADDITION, OR DESCRIPTION, in the Dentists Act, 1878 (c. 33), are declared by the Medical Act, 1886 (c. 48), s. 26, to “include any title, addition to a name, designation, or description, whether expressed in words or by letters, or partly in one way and partly in the other.”

TOLL [in the Railways Clauses Act, 1845 (8 & 9 Vict. c. 20), s. 90, does not apply to a sum charged by a railway company for cartage. *Evershed v. London and N. W. Railway* (1878), 2 Q. B. D. 254; 3 Q. B. D. 141.

„ in sect. 97 of the same Act, means “money charged for the use of a railway by persons carrying goods in their own carriages,” and does not include charges for the conveyance of goods by the railway company as carriers. *Wallis v. L. & S. W. Rail. Co.* (1870), L.R. 5 Ex. 62.] See *Barr, Moering & Co. v. L. & N. W. R.*, (1905) 2 K. B. 113.

TOWN, [in 3 Geo. 4, c. lviii., is not limited to the town as it stood at the passing of the Act, but means the town for the time being. *Collier v. Worth* (1876), 1 Ex. D. 468.

„ in Lands Clauses Consolidation Act, 1845 (8 & 9 Vict. c. 18), s. 128, means a collection of houses so near to one another that the inhabitants may reasonably be considered as dwelling together. *L. & S. W. Rail. Co. v. Blackmore* (1870), L. R. 4 H. L. 610, 615.]

„ as used in 1 & 2 Vict. c. ii. s. 35, means “a continuous series of houses, not necessarily contiguous, but sufficiently so to form a congregation of human habitations.” Per Cockburn, C.J., in *Commissioners of Milton v. Faversham L. B.* (1869), 10 B. & S. 552.

TRADE, [in 57 Geo. 3, c. 25 (House Tax), s. 1, is not limited to the business of buying and selling, but extends to the business of a telegraph company. *Bank of India v. Wilson* (1878), 3 Ex. D. 113.]

„ in Income Tax Acts. See *San Paulo Brazilian Rail. Co. v. Carter*, (1896) App. Cas. 31; *Commissioners of Taxes v. Kirk*, (1900) App. Cas. 588.

„ DESCRIPTION, in the Merchandise Marks Act, 1887 (50 & 51 Vict. c. 28), s. 2, is distinct from “trade-mark,” and is not confined to the physical application of a trade label to the articles sold, but extends to the description of the article in the invoice accompanying it. *Budd v. Lucas*, (1891) 1 Q. B. 408. These words do not extend to verbal descriptions. *Coppen v. Moore* (No. 1), (1898) 2 Q. B. 300. A description may be false, as a trade description, though scientifically correct, and *vice versa*. *Fowler v. Cripps*, (1906) 1 K. B. 16, 21, Wills, J.

„ UNION.—See *Chamberlain's Wharf, Ltd. v. Smith*, (1900) 2 Ch. 605.

TRADESMAN, in the Lord's Day Act (29 Chas. 2, c. 7), s. 1. See *Palmer v. Snow*, (1900) 1 Q. B. 725.

TRADING, in sect. 625 of the Merchant Shipping Act, 1894 (Compulsory Pilotage), does not mean carrying goods from port to port, but visiting ports in pursuit of commercial adventure. *Edenbridge (Owners) v. Green*, (1897) App. Cas. 333.

„ COMPANY, in sect. 5 of the Apportionment Act, 1870 (33 & 34 Vict. c. 35), does not include a private partnership. *Jones v. Ogle* (1872), L. R. 8 Ch. 192; *Re Griffith* (1879), 12 Ch. D. 655, 663.

„ INWARDS, TRADING OUTWARDS, in Mersey Docks, &c. Act, 1858 (21 & 22 Vict. c. xcii.), s. 230, has the same sense as in Customs Consolidation Act, 1876, s. 101. The same rule would be doubtless applied to like phrases in all local Acts authorising the taking of dock dues, tolls, or tonnage dues, having regard, of course, to the Customs law in force when the local Act was

passed, and to the question whether Customs or other Acts had affected or altered the local Act. *Mersey Docks Co. v. Henderson* (1888), 13 App. Cas. 595.

TRAIN, in the Employers' Liability Act, 1880 (43 & 44 Vict. c. 42), s. 1, includes trucks in a siding, even though they are being moved by hydraulic and not by steam power. *Cox v. G. W. R.* (1882), 9 Q. B. D. 106, 109.

TRANSMISSION OF SHARES = devolution of title to shares otherwise than by transfer by act *inter vivos*; used in contradistinction to transfer, includes devolution by death, marriage, or bankruptcy, or any other way than transfer. *Barton v. L. & N. W. R.* (1890), 24 Q. B. D. 89, Lindley, L.J.

TRANSMIT, in sect. 33 of the Corrupt and Illegal Practices Prevention Act, 1883 (46 & 47 Vict. c. 51), means "send." *Mackinnon v. Clark*, (1898) 2 Q. B. 251.

TREASURY means, in all Acts, unless the contrary intention appears, the Lord High Treasurer for the time being, or the Commissioners for the time being, of His Majesty's Treasury. Int. Act, 1889, c. 63, s. 12 (2), *post*, Appendix C. This provision supersedes numerous like enactments in prior statutes, which are in almost identical terms with those used in the Interpretation Act, 1889.

TREATIES, embodied in Acts of Parliament, become part of the municipal jurisprudence of this country, and, consequently, the statutes in which they are embodied must be construed according to the rules of British law. *Re Tivnan* (1864), 5 B. & S. 645, 696, note (a); *Walker v. Baird*, (1892) App. Cas. 491.

TREATY, in Slave Trade Act, 1873 (c. 88), s. 2, "includes any convention, agreement, engagement, or arrangement."

TRENCH.—See *Drain*.

TRIAL, as used in R. S. C. 1875, Ord. 38, r. 4, is a technical word, and will not include a proceeding before a chief clerk. *Re Knight* (1884), 25 Ch. D. 300.

TRIBUTARY, in the Salmon Fishery Act, 1865 (28 & 29 Vict. c. 121), s. 3, means something in the nature of a stream running into another stream. It includes a mill-pond fed from and reflowing to a tributary stream, *Moses v. Iggo*, (1906) 1 K. B. 516; but not an artificial reservoir. *Stead v. Nicholas*, (1901) 2 K. B. 163; *Harbottle v. Terry* (1882), 10 Q. B. D. 131.

TRUST and TRUSTEE, in the Trustee Act, 1893 (c. 53), s. 50, include implied and constructive trusts, and cases where the trustee has a beneficial interest in the trust property and the duties incident to the office of personal representative of a deceased person, but not duties incident to an estate conveyed by way of mortgage.

TRUSTEE.—See *Bare trustee*.

„ in the Larceny Act, 1861 (24 & 25 Vict. c. 96), s. 1, means a trustee under an express trust in writing.

UNDERTAKER, in the Workmen's Compensation Act, 1897 (c. 37). See *Houlder v. Griffin*, (1905) App. Cas. 220; *Rouse v. Jobson*, (1901) App. Cas. 404; *Smith v. Steam Fishing Co.*, (1906) 2 K. B. 275.

UNDERWOODS.—See *Saleable underwoods*.

UNION.—*Vide Poor Law Union*, and *ante*, p. 152.

UNMARRIED, as used in 3 Will. & Mar. c. 11 (Poor Law), means “without having at the time husband or wife”: per Bayley, J., in *Doe d. Tennyson v. Rawding* (1819), 2 B. & Ald. 449; but the ordinary meaning of the word is “without ever having been married.” *Dalrymple v. Hall* (1881), 16 Ch. D. 716.

[UPON MARRIAGE, as used in 18 & 19 Vict. c. 43, s. 1 (Infants), may mean immediately after marriage. *Re Sampson and Wall* (1884), 25 Ch. D. 482.

„ THE TRIAL, as used in 20 & 21 Vict. c. clvii. (Mayor's Court), s. 8, means at or immediately after the trial, and *not* within a reasonable time after. *Folkard v. Metropolitan Railway* (1873), L. R. 8 C. P. 470. See *At the trial*.]

VALUABLE CONSIDERATION, in the sense of the law, may consist either in some right, interest, profit, or benefit accruing to the one party, or some forbearance, detriment, loss, or responsibility given, suffered, or undertaken by the other. Com. Dig. action on the case *assumpsit*, B. 1—15. *Currie v. Misa* (1875), L. R. 10 Ex. 153, Lush, J., approved, *Fleming v. Bank of New Zealand*, (1900) App. Cas. 577, 586.

VALUABLE SECURITY, in 12 & 13 Vict. c. 103, s. 16, includes a judgment recovered. *West Ham Union v. Owens* (1872), L. R. 8 Ex. 37.

„ in the Larceny Act, 1861 (24 & 25 Vict. c. 96), s. 1, does not include a policy of insurance which has become due. *R. v. Tatlock* (1877), 2 Q. B. D. 157, 163, and see Archbold Cr. Pl. (23rd ed.), 501.

VEHICLE, in the Weights and Measures Act, 1889 (c. 21), s. 35, means, unless the context otherwise requires, “any carriage, cart, waggon, truck, barrow, or other means of carrying coal by land, in whatever manner the same may be drawn or propelled; but does not include a railway truck or waggon.” In the Fugitive Offenders Act, 1881 (c. 69), s. 21, it has a wider signification.

„ in the Customs and Inland Revenue Act, 1888 (51 & 52 Vict. c. 8), meaning considered. *Moore v. Lewis*, (1906) 1 K. B. 27.

VENTILATION, in sect. 13 of the Diseases of Animals Act, 1878. See *Baker v. Williams*, (1898) 1 Q. B. 23.

VERMIN, in the Gun Licence Act, 1880 (33 & 34 Vict. c. 57), s. 7, held not to include rabbits. *Lord Advocate v. Young* (1898), 25 Rettie, 778.



VESSEL, in Slave Trade Act, 1873 (c. 88), s. 2, means "any vessel used in navigation."

VEST [in the Public Health Act, 1875 (38 & 39 Vict. c. 55), s. 149, in the expression "all streets . . . shall vest in . . . the urban authority," means that "the space and the street itself, so far as it is ordinarily used in the way in which streets are used, shall vest in the" urban authority. *Coverdale v. Charlton* (1879), 4 Q. B. D. 117, Bramwell, L.J.].

The word "vest" gives the road authority more than an easement, but does not transfer to it the soil of the street, nor more than such property as is necessary for the control, protection, and maintenance of the street as a highway for public use. *Baird v. Mayor, &c. of Tunbridge Wells*, (1896) App. Cas. 434; *cf. Battersea Vestry v. County of London and Brush Provincial Electric Lighting Co.*, (1899) 1 Ch. 474; *Municipal Council of Sydney v. Young*, (1898) App. Cas. 457.

VESTRY, in the Local Government Act, 1894 (56 & 57 Vict. c. 73), if used in relation to a parish, means the inhabitants of the parish, whether in vestry assembled or not, and includes any select vestry either by statute or at common law (sect. 75).

VILL.—*Cowes U. D. C. v. Southampton, &c. Steam Packet Co.*, (1905) 2 K. B. 287, Kennedy, J.

[VOID, in several Acts relating to the Poor Law, has been held to mean "voidable;" but as used in 54 Geo. 3, c. cxxiv. s. 28, means "void" in the ordinary sense of the word. *Pearse v. Morrice* (1834), 2 A. & E. 84; and see *ante*, pp. 223—227, 444.

VOIDABLE, in sect. 1 of the Infants Relief Act, 1874 (37 & 38 Vict. c. 62), means valid until repudiated, and not invalid until confirmed. *Duncan v. Dixon* (1890), 44 Ch. D. 211, at p. 213, Kekewich, J.; *vide ante*, p. 226.

VOLUME.—See *Part of a volume*.

VOLUNTARY CONTRIBUTION, in the Customs and Inland Revenue Act, 1885 (c. 51), s. 11 (6), does not mean "a thing which you cannot be compelled by law to do," but a thing which you gain nothing by making—*i.e.* a gift. *Re New University Club* (1887), 18 Q. B. D. 720.

" in 6 & 7 Vict. c. 36. See *Savoy Overseers v. Art Union of London*, (1896) App. Cas. 296; *Royal College of Music v. Westminster Vestry*, (1898) 1 Q. B. 809.

" in the Charitable Trusts Act, 1853 (16 & 17 Vict. c. 137), s. 62. See *Re Stockport, &c. Schools*, (1898) 2 Ch. 687 (C. A.).

WAGES, in 1 & 2 Will. 4, c. 37 (the Truck Act), in sect. 25 is defined to be "any money or other thing had or contracted to be paid, delivered, or given as a recompense, reward, or remuneration for any labour done or to be done, whether within a certain time or to a certain amount, or for a time or an amount uncertain." See *Archer v. James* (1861), 2 B. & S. 74.

WAGES, in 33 & 34 Vict. c. 30, which enacts that "no order for the attachment of the wages of any servant, labourer, or workman shall," &c., is used in its popular and not in its etymological sense, and does not include the salary of a secretary to a company. *Gordon v. Jennings* (1882), 9 Q. B. D. 45.

WANDERING ABROAD, in the Vagrancy Act, 1824 (5 Geo. 4, c. 83), s. 3, means wandering abroad as a habit and mode of life, and not for a certain specific purpose intended to be answered and not again resorted to. So, solicitation of alms by men on strike is not within the section. *Pointon v. Hill* (1884), 12 Q. B. D. 306.

[WARRANT FOR THE DELIVERY OF GOODS, in 7 & 8 Geo. 4, c. 29, s. 5, included a pawnbroker's ticket. *Morrison's case* (1859), Bell, C. C. 159.]

WARRANTY (WRITTEN), in sect. 25 of the Sale of Food and Drugs Act, 1875 (38 & 39 Vict. c. 63), did not include a written contract to supply eighty-six gallons of good and pure milk daily for six months, although an action for breach of warranty would lie on the contract. *Harris v. May* (1883), 12 Q. B. D. 97. The warranty within the section to protect the seller must be specific in respect to the article sold.

WATER COMPANY, in the Public Health Act, 1875 (38 & 39 Vict. c. 55), ss. 4, 52. See *Wolverhampton Corporation v. Bilston Commissioners*, (1891) 1 Ch. 315; affirmed by Court of Appeal, W. N. (1891) 56.

WATERCOURSE.—See *Drain*.

WAY, in the Employers' Liability Act, 1880 (43 & 44 Vict. c. 42), s. 1, sub-s. 1, means not a right of way, but some material thing which may be used within or in connection with the business of the employer. *McGiffen v. Palmer's Shipbuilding Co.* (1882); 10 Q. B. D. 1, 5, 8.

„ (CONDITION OF A), in the same Act, does not refer to obstacles on the way, but to the state of the way itself. (Same case.) See *Brannagan v. Robinson*, (1892) 1 Q. B. 344.

WEIGHING INSTRUMENT, in the Weights and Measures Act, 1889 (c. 21), s. 35, unless the context otherwise requires, includes "scales with the weights belonging thereto, scale beams, balances, spring balances, steel-yards, weighing machines, and other instruments for weighing." This is not a definition, but a statutory abbreviation.

WEIGHING MACHINE, in the Weights and Measures Act, 1878 (c. 49), ss. 25, 26, 27, 48, includes any "weighing instrument" as defined by the Weights and Measures Act, 1889 (c. 21), s. 35.

WHARF, in sect. 7 of the Workmen's Compensation Act, 1897 (c. 37). See *Hall v. Snowden*, (1899) 2 Q. B. 136; *Haddock v. Humphrey*, (1900) 1 Q. B. 609.

WHOLESALE, in the Licensing Acts, means a sale of liquor in quantities of not less than four and a half gallons. *R. v. Jenkins* (1891), 61 L. J. M. C. 57.

WIDTH, in Public Health Act, 1875, s. 157, means width of roadway, not distance between the fronts of houses on each side of a street. *Robinson v. Barton-Eccles L. B.* (1883), 8 App. Cas. 798.

WILL.—*Vide ante*, p. 187.

WOODS (COMMISSIONERS OF, or OF WOODS AND FORESTS).—See Int. Act, 1889 (c. 63), s. 12 (12), *post*, Appendix C.

WORKING class (in the Standing Orders of the House of Commons, 1906, Private Business, 33 a) means mechanics, artisans, labourers, and others working for wages, hawkers, costermongers, persons not working for wages but working at some trade or handicraft without employing others except members of their own family, and persons other than domestic servants, whose income does not exceed an average of 30s. a week, and the families of any such persons who may be residing with them. See Housing of Working Classes Acts, 1890 (53 & 54 Vict. c. 70), s. 53, and 1903 (3 Edw. 7, c. 39, sched. cl. 12 (e)).

WORKMAN, in the Lord's Day Act (29 Chas. 2, c. 7), s. 1. *R. v. Silvester* (1864), 33 L. J. M. C. 79. See *Palmer v. Snow*, (1900) 1 Q. B. 725.

„ in Employers and Workmen Act, 1875 (38 & 39 Vict. c. 91). See *Simpson v. Ebbw Vale Steel, &c. Co.*, (1905) 1 K. B. 453; *Squire v. Midland Lace Co.*, (1905) 2 K. B. 448.

WORKPLACE, in sect. 38 of the Public Health (London) Act, 1891. See *Bennett v. Harding*, (1900) 2 Q. B. 397.

WORKSHOP, in the Factory Acts. See *Fullers, Ltd. v. Squires*, (1901) 2 K. B. 209.

WORKS (COMMISSIONERS OF).—See Int. Act, 1889 (c. 63), s. 12 (13), *post*, Appendix C.

WRECK.—In Merchant Shipping Act, 1894 (c. 60), s. 510, includes “jetsam, flotsam, lagan, and derelict, found in or on the shores of the sea or of any tidal water.”

WRIT, in the Sheriffs Act, 1887 (c. 55), s. 38, “includes any process” unless the context otherwise requires.

WRITING.—*Vide ante*, p. 151.

[YEAR.—By the Style Act (24 Geo. 2, c. 23), s. 1, it is enacted “that the first day of January . . . shall be reckoned, taken, deemed, and accounted to be the first day of the year . . . and that each new year shall commence and begin to be reckoned from the

first day of every . . . month of January . . .” By sect. 2 it is enacted what years are to be leap years. By 40 Hen. 3 (21 Hen. 3, Ruffh.) it was enacted that “in leap year the intercalary day with the day preceding it shall be accounted as one day,” but this enactment has been repealed by 42 & 43 Vict. c. 59. *R. v. Worminghall* (1817), 6 M. & S. 351.]

YEAR (FINANCIAL).—*Vide ante*, p. 151.

YOUNG PERSON, in Summary Jurisdiction Act, 1879 (42 & 43 Vict. c. 49), s. 49, means a person who, in the opinion of the Court, is apparently of the age of 12 years, and under the age of 16 years. Under the Factory Act, 1901 (1 Edw. 7, c. 22), it means a person who has ceased to be a child (*i.e.* is 14, or being 13 has a certificate of proficiency) and is under 18 (s. 156).

## APPENDIX B.

### POPULAR OR SHORT TITLES OF STATUTES.

THIS Appendix contains popular titles of Acts and statutory short titles given to single Acts or to sets of Acts by some other Act. It does not contain all the short titles given to Acts by one of their own sections.

Where the Act referred to is prior to 1837, and is still in force, a reference is added to the Revised Statutes (second edition), in which are noted the main differences in the numbering of the chapters from that used in Ruffhead's edition.

Statutes passed since 1861 usually have statutory short titles given them by one of the earlier or later sections. When such title exists, it is usually indicated in the first column of the Official Chronological Table of Statutes prefixed to the Official Index to the statutes now annually published, or in the body of that Index.

By the Interpretation Act, 1889 (52 & 53 Vict. c. 63), s. 35 (1), *post*, Appx. C., it is provided that in any Act, instrument, or document an Act may, without prejudice to any other mode of citation, be cited (*a*) by reference to the (statutory) short title, if any, of the Act, either with or without a reference to the chapter; or (*b*) by reference to the regnal year in which the Act was passed; and (*c*), where there are more sessions than one in the same regnal year, by reference to the statute or the session, as the case may require, and where there are more chapters than one, by reference to the chapter; and any enactment may be cited by reference to the section or sub-section of the Act in which the enactment is contained.

The Short Titles Act, 1896 (59 & 60 Vict. c. 14), gives statutory short titles to many of the Acts included in this Appendix, by which they may be cited, without prejudice to any other mode of citation, and in some cases adopts the popular titles herein given. The Act also gives (sect. 2 (1)) a number of collective titles for convenient reference in new statutes to a series of Acts which are *in pari materia*; and by sect. 2 (2), it is provided that any Act passed after this Act may, as to the whole or any part thereof, be cited with any of the groups of Acts mentioned in the Second Schedule to this Act, or with any group

Acts in the Appendix marked with a \* are repealed.

Short titles marked † are given by the Short Titles Act, 1896.

Collective titles marked ‡ are given by, or under, sect. 2 of the Short Titles Act, 1896.

of Acts to which a collective title has been given by any Act passed before this Act, that group shall be construed as including that Act or part, and if the collective title of the Act states the first and last year of the group, the year in which that Act is passed shall be substituted for the last year of the group, and so on as often as a subsequent Act or part of an Act is added to the group.

- Aberdeen's (Lord) Act (5 Geo. 4, c. 87).  
 † Accessories and Abettors Act, 1861 (24 & 25 Vict. c. 94).  
 † Accumulations Act, 1800 (39 & 40 Geo. 3, c. 98).  
 §     "     "     1892 (55 & 56 Vict. c. 58).  
 Acts of Oblivion (12 Chas. 2, c. 11; 13 Chas. 2, st. 1, c. 15).  
 † Acts of Parliament (Commencement Act), 1793 (33 Geo. 3, c. 13).  
 †     "     "     (Expiration Act), 1808 (48 Geo. 3, c. 106).  
 †     "     "     (Mistaken References Act), 1830 (11 Geo. 4 & 1 Will. 4, c. 71).  
 †     "     "     (Mistaken References Act), 1837 (7 Will. 4 & 1 Vict. c. 60).  
 † Act of Settlement (12 & 13 Will. 3, c. 2).  
       "     Submission (23 Hen. 8, c. 14).  
       "     Supremacy (1 Eliz. c. 1).  
 Acts of Uniformity (1 Eliz. c. 2; † 14 Chas. 2, c. 4, 13 & 14 Chas. 2 in Ruffhead; 35 & 36 Vict. c. 35).  
       "     Union (6 Anne, cc. 11, 40 (with Scotland); 39 & 40 Geo. 3, c. 67 (with Ireland)).  
 Additions, Statute of (1 Hen. 5, c. 5). See 2 Reeves, Hist. Eng. Law, 520; and 46 & 47 Vict. c. 59, s. 7.  
 † Administration of Estates Act, 1798 (38 Geo. 3, c. 87).  
 †     "     "     1833 (3 & 4 Will. 4, c. 104).  
 †     "     "     1869 (32 & 33 Vict. c. 46).  
 † Admiralty Act, 1690 (2 Will. & Mar. sess. 2, c. 2).  
 †     "     "     1827 (7 & 8 Geo. 4, c. 65).  
 †     "     "     1832 (2 & 3 Will. 4, c. 40).  
 †     "     Court Act, 1840 (3 & 4 Vict. c. 65).  
 †     "     Jurisdiction (India) Act, 1860 (23 & 24 Vict. c. 88).  
 §     "     Lands and Works Act, 1864 (27 & 28 Vict. c. 57).  
 †     "     Offences Act, 1826 (7 Geo. 4, c. 38).  
 †     "     "     1844 (7 & 8 Vict. c. 2).  
 †     "     Offences (Colonial) Act, 1849 (12 & 13 Vict. c. 96).  
 †     "     "     1860 (23 & 24 Vict. c. 122).  
 §     "     Powers, &c. Act, 1865 (28 & 29 Vict. c. 124).  
 †     "     (Signal Stations) Act, 1815 (55 Geo. 3, c. 128).  
 §     "     Suits Act, 1868 (31 & 32 Vict. c. 78).  
 †     "     and War Office Regulation Act, 1878 (41 & 42 Vict. c. 53).  
 "Adoptive Acts."—See 56 & 57 Vict. c. 73, s. 7 (1); and 62 & 63 Vict. c. 14, s. 4.  
 Adulteration Acts.—The Sale of Food and Drugs Acts, 1875, 1879, and 1899; and the Margarine Act, 1887.

\* Repealed.

† Given by the Short Titles Act, 1896.

¶ Collective title given by or under the Short Titles Act, 1896.

§ Given by the Act.

- † Adulteration of Coffee Act, 1718 (5 Geo. 1, c. 11).
- †     "     of Hops Act, 1733 (7 Geo. 2, c. 19).
- †     "     of Seeds Acts, 1869 and 1878. See 41 & 42 Vict. c. 17.
- †     "     of Tea Act, 1730 (4 Geo. 2, c. 14).
- †     "     "     1776 (17 Geo. 3, c. 29).
- †     "     of Tea and Coffee Act, 1724 (11 Geo. 1, c. 30).
- § Advertising Stations Rating Act, 1889 (52 & 53 Vict. c. 27).
- † Advowsons Act, 1708 (7 Anne, c. 18).
- † Alehouse Act, 1828 (9 Geo. 4, c. 61).
- Alien Acts (\*32 Geo. 3, c. 4; \*45 Geo. 3, c. 155; \*55 Geo. 3, c. 54)  
   (see 6 Law Quarterly Review, p. 37), and 11 & 12 Vict.  
   c. 20, expired, but revived for a time by 45 & 46 Vict.  
   c. 25, s. 15.
- § Aliens Act, 1905 (5 Edw. 7, c. 13).
- \* Aliens (Registration of) Act, 1836 (6 & 7 Will. 4, c. 11). See 6 Law  
   Quarterly Review, 39.
- † Allotments Act, 1832 (2 & 3 Will. 4, c. 42).
- "     Acts, 1887 and 1890 (50 & 51 Vict. c. 48 and 53 & 54  
   Vict. c. 65); by s. 1 of latter Act.
- † American Colonies Act, 1766 (6 Geo. 3, c. 12).
- † Anatomy Act, 1832 (2 & 3 Will. 4, c. 75).
- §     "     "     1871 (34 & 35 Vict. c. 16).
- Ancient Monuments Protection Acts, 1882 to 1900 (45 & 46 Vict.  
   c. 73; 55 & 56 Vict. c. 46, see s. 1, and 63 & 64 Vict. c. 34,  
   see s. 8).
- Anderson's Act, 37 & 38 Vict. c. 15.
- † Apothecaries Act, 1815 (55 Geo. 3, c. 194).
- † Apportionment Act, 1834 (4 & 5 Will. 4, c. 22).
- §     "     "     1870 (33 & 34 Vict. c. 35).
- † Appraisers' Licences Act, 1802 (46 Geo. 3, c. 43).
- † Apprentices Act, 1814 (54 Geo. 3, c. 96).
- †     "     "     1833 (3 & 4 Will. 4, c. 63).
- †     "     (Settlement) Act, 1757 (31 Geo. 2, c. 11).
- § Arbitration Act, 1889 (52 & 53 Vict. c. 49).
- §     "     (Scotland) Act, 1894 (57 & 58 Vict. c. 13).
- † Archdeaconries and Rural Deaneries Act, 1874 (37 & 38 Vict. c. 63).
- Army Act (44 & 45 Vict. c. 58), by 53 Vict. c. 4, s. 4.
- †     "     (Artillery, &c.) Pensions Act, 1833 (3 & 4 Will. 4, c. 29).
- †     "     Pensions Act, 1830 (11 Geo. 4 & 1 Will. 4, c. 41).
- †     "     Prize Money Act, 1832 (2 & 3 Will. 4, c. 53).
- "     Schools Act (54 & 55 Vict. c. 16).
- † Arsenic Act, 1851 (14 & 15 Vict. c. 13).
- † Art Unions Act, 1846 (9 & 10 Vict. c. 48).
- Articuli cleri* (1315, 9 Edw. 2, stat. 1), 1 Rev. Statt. (2nd ed.), 65.
- "     *Super chartas* (1300, 28 Edw. 1), 1 Rev. Statt. (2nd ed.), 57.
- Ashbourne's (Lord) Acts (44 & 45 Vict. c. 49, and 48 & 49 Vict. c. 73).
- † Assessionable Manors Award Act, 1848 (11 & 12 Vict. c. 83).
- † Assessment of Taxes Act, 1808 (48 Geo. 3, c. 141).

\* Repealed.

† Given by the Short Titles Act, 1896.

¶ Collective title given by or under the Short Titles Act, 1896.

§ Given by the Act.

- † Assize Commission Act, 1822 (3 Geo. 4, c. 10).
- \* „ Statute of (21 Edw. 1).
- † Assizes Act, 1833 (3 & 4 Will. 4, c. 71).
- † „ „ 1839 (2 & 3 Vict. c. 72).
- † „ „ (Ireland) Act, 1825 (6 Geo. 4, c. 51).
- † „ „ „ 1835 (5 & 6 Will. 4, c. 26).
- † „ „ „ 1850 (13 & 14 Vict. c. 85).
- † Attachment of Goods (Ireland) Act, 1850 (13 & 14 Vict. c. 73).
- † Attendance of Witnesses Act, 1854 (17 & 18 Vict. c. 34).
- † Auctioneers Act, 1845 (8 & 9 Vict. c. 15).
- † Augmentation of Benefices Act, 1831 (1 & 2 Will. 4, c. 45).
- † „ „ „ 1854 (17 & 18 Vict. c. 84).
- † Australian Colonies Act, 1861 (24 & 25 Vict. c. 44).
- § „ „ Duties Act, 1873 (36 & 37 Vict. c. 22).
- § „ „ „ 1897 (58 & 59 Vict. c. 3).
- † „ Constitutions Act, 1842 (5 & 6 Vict. c. 76).
- † „ „ „ 1844 (7 & 8 Vict. c. 74).
- † „ „ „ 1850 (13 & 14 Vict. c. 59).
- † „ „ „ 1862 (25 & 26 Vict. c. 11).
- † „ Courts Act, 1828 (9 Geo. 4, c. 83).
- † „ Waste Lands Act, 1855 (18 & 19 Vict. c. 56).
- § Bail Act, 1898 (61 & 62 Vict. c. 7).
- † „ Bonds Act, 1808 (48 Geo. 3, c. 58).
- § Baines' Act (12 & 13 Vict. c. 45).
- § Ballot Act, 1872 (35 & 36 Vict. c. 33, temp.).
- Bank of England Acts, 1694 to 1892.
- „ Ireland Acts, 1808 to 1852.
- † „ Charter Act, 1844 (7 & 8 Vict. c. 32).
- „ Notes Acts, 1826 to 1852.
- † „ „ (Forgery) Act, 1801 (41 Geo. 3, c. 57).
- † „ „ „ 1805 (45 Geo. 3, c. 89).
- † „ „ „ (Scotland) Act, 1820 (1 Geo. 4, c. 92).
- „ „ (Ireland) Acts, 1825 to 1864.
- „ „ (Scotland) Acts, 1765 to 1854.
- † Banking Companies (Shares) Act, 1867 (30 & 31 Vict. c. 29).
- † „ Copartnerships Act, 1864 (27 & 28 Vict. c. 32).
- † Bankers (Scotland) Act, 1826 (7 Geo. 4, c. 67).
- † „ „ 1854 (17 & 18 Vict. c. 73).
- † „ (Ireland) Act, 1825 (6 Geo. 4, c. 42).
- † „ „ 1845 (8 & 9 Vict. c. 37).
- † Banks (Ireland) Act, 1830 (11 Geo. 4 & 1 Will. 4, c. 32).
- Bankruptcy Acts, 1883 to 1890.
- „ (Scotland) Acts, 1856 to 1881.
- § „ „ Act, 1856 (19 & 20 Vict. c. 79).
- † „ „ 1875 (38 & 39 Vict. c. 26).
- § „ „ and Real Securities (Scotland) Act, 1857 (20 & 21 Vict. c. 19).
- \* Bankrupts, Statute of (34 & 35 Hen. 8, c. 4).

\* Repealed.

† Given by the Short Titles Act, 1896.

§ Collective title given by or under the Short Titles Act, 1896.

§ Given by the Act.



- † Baptismal Fees Abolition Act, 1872 (35 & 36 Vict. c. 36).
- \* Barnard's (Sir John) Act (7 Geo. 2, c. 8).
- Bass' Act (27 & 28 Vict. c. 55).
- † Bastards (Scotland) Act, 1836 (6 & 7 Will. 4, c. 22).
- † Bastardy Act, 1845 (8 & 9 Vict. c. 10).
- †     "     (Ireland) Act, 1863 (26 & 27 Vict. c. 21).
- §     "     Laws Amendment Act, 1872 (35 & 36 Vict. c. 65).
- §     "     "     "     1873 (36 & 37 Vict. c. 9).
- ¶ Baths and Wash-houses Acts, 1846 to 1899. See 59 & 60 Vict. c. 14,  
    and 62 & 63 Vict. c. 29.
- † Beerhouse Act, 1830 (11 Geo. 4 & 1 Will. 4, c. 64).
- †     "     "     1834 (4 & 5 Will. 4, c. 85).
- †     "     "     1840 (3 & 4 Vict. c. 61).
- Beerhouses (Ireland) Acts, 1864 to 1867. See 40 & 41 Vict. c. 4.
- † Beer Licences Act, 1830 (11 Geo. 4 & 1 Will. 4, c. 51).
- † Berwick-on-Tweed Act, 1836 (6 & 7 Will. 4, c. 103).
- † Berwickshire Courts Act, 1853 (16 & 17 Vict. c. 27).
- \* Bethell's Act (20 & 21 Vict. c. 54).
- † Betting Act, 1853 (16 & 17 Vict. c. 119).
- \* Bigamy, Statute of (4 Edw. 1, stat. 3).
- † Bill Chamber Procedure Act, 1857 (20 & 21 Vict. c. 18).
- † Bill of Rights (1 Will. & Mar. sess. 2, c. 2).
- § Bills of Exchange Act, 1883 (45 & 46 Vict. c. 61).
- †     "     "     (Ireland) Act, 1828 (9 Geo. 4, c. 24).
- †     "     "     "     "     1864 (27 & 28 Vict. c. 7).
- †     "     "     (Scotland) Act, 1772 (12 Geo. 3, c. 72).
- †     "     Lading Act, 1855 (18 & 19 Vict. c. 111).
- \*     "     Sale Act, 1854 (17 & 18 Vict. c. 36) } By 29 & 30 Vict. c. 96.
- \*     "     "     1866 (29 & 30 Vict. c. 96) }
- "     "     1878 and 1882. See 45 & 46 Vict. c. 43, s. 1.
- §     "     "     1890 (53 & 54 Vict. c. 53).
- §     "     "     1891 (54 & 55 Vict. c. 35).
- "     Sale (Ireland) Acts, 1879 and 1883. See 46 & 47 Vict. c. 7.
- † Birkenhead Enfranchisement Act, 1861 (24 & 25 Vict. c. 112).
- ¶ Births and Deaths Registration Acts, 1836 to 1901.
- "     "     "     (Ireland) Acts, 1863 to 1880.
- ¶ Births, Deaths, and Marriages (Scotland) Acts, 1854 to 1860.
- § Bishopricks Act, 1878 (41 & 42 Vict. c. 68).
- † Bishops in Foreign Countries Act, 1841 (5 Vict. c. 6).
- † Bishops' Trusts Substitution Act, 1858 (21 & 22 Vict. c. 71).
- \* Black Act (9 Geo. 1, c. 22). See 1 Lecky, Hist. Eng. 488.
- "     Acts. The editions of the Scots Acts published between 1566  
    and 1597. See 1 Statt. Realm, p. xlv.
- Blandford's (Lord) Acts (19 & 20 Vict. c. 104; 21 & 22 Vict. c. 24).  
    See *Hughes v. Lloyd* (1889), 22 Q. B. D. 157.
- † Board of Trade (Parliamentary Secretary) Act, 1867 (30 & 31 Vict.  
    c. 72).
- †     "     "     (President) Act, 1826 (7 Geo. 4, c. 32).
- Boiler Explosions Acts, 1882 and 1890. See 53 & 54 Vict. c. 35.

\* Repealed.

† Given by the Short Titles Act, 1896.

¶ Collective title given by or under the Short Titles Act, 1896.

§ Given by the Act.

- † Bombay Civil Fund Act, 1882 (45 & 46 Vict. c. 45).
- † Bonded Warehouses Act, 1848 (11 & 12 Vict. c. 122).
- † Borough Clerks of the Peace (Ireland) Act, 1868 (31 & 32 Vict. c. 98).
- † „ Coroners (Ireland) Act, 1860 (23 & 24 Vict. c. 74.)
- † „ Funds Act, 1872 (35 & 36 Vict. c. 91).
- † „ Quarter Sessions Act, 1877 (40 & 41 Vict. c. 17).
- † Boundaries of Burghs Extension (Scotland) Act, 1857 (20 & 21 Vict. c. 70).
- „ „ „ „ „ 1861 (24 & 25 Vict. c. 36).
- † Boundary Survey (Ireland) Act, 1854 (17 & 18 Vict. c. 17).
- † „ „ „ „ 1857 (20 & 21 Vict. c. 45).
- † „ „ „ „ 1859 (22 & 23 Vict. c. 8).
- Bourne's (Sturges) Acts (58 Geo. 3, c. 69; 59 Geo. 3, c. 12).
- Bovill's (Sir W.) Acts, 23 & 24 Vict. c. 34 (Petition of Right); \*25 & 26 Vict. c. 86 (Lunacy); and \*28 & 29 Vict. c. 86 (Partnership).
- † Bread Act, 1836 (6 & 7 Will. 4, c. 37).
- † „ (Ireland) Act, 1838 (1 & 2 Vict. c. 28).
- † Brewers' Licensing Act, 1850 (13 & 14 Vict. c. 67).
- ¶ Bridges Acts, 1740 to 1815.
- ¶ „ (Ireland) Acts, 1813 to 1875.
- † „ (Scotland) Act, 1813 (53 Geo. 3, c. 11).
- † British Law Ascertainment Act, 1859 (22 & 23 Vict. c. 63).
- † „ Nationality Act, 1780 (4 Geo. 2, c. 21).
- † „ „ „ 1772 (13 Geo. 3, c. 21).
- † „ North America Act, 1821 (1 & 2 Geo. 4, c. 66).
- † „ „ „ „ 1840 (3 & 4 Vict. c. 35).
- § „ „ „ „ 1867 (30 & 31 Vict. c. 3).
- „ „ „ „ Acts, 1867 to 1886. See 49 & 50 Vict. c. 35.
- † „ „ „ (Quebec) Act, 1774 (14 Geo. 3, c. 83).
- † „ „ „ (Seigniorial Rights) Act, 1825 (6 Geo. 4, c. 59).
- † „ „ „ (Trade and Lands) Act, 1822 (3 Geo. 4, c. 119).
- ¶ „ Subjects Acts, 1708 to 1772.
- Brougham's (Lord) Acts, (1) (13 & 14 Vict. c. 21) (interpretation); (2) 8 & 9 Vict. c. 113; 14 & 15 Vict. c. 99; 16 & 17 Vict. c. 83 (evidence); (3) 20 Vict. c. 96 (Scotch marriages).
- Bryce's Act (49 & 50 Vict. c. 27).
- Bubble Act (6 Geo. 1, c. 18).
- ¶ Building Societies Acts, 1874 to 1894.
- † Burgh Customs (Scotland) Act, 1870 (33 & 34 Vict. c. 42).
- † „ Trading Act, 1846 (9 & 10 Vict. c. 17).
- † „ Voters' Registration (Scotland) Act, 1856 (19 & 20 Vict. c. 58).
- † „ Wards (Scotland) Act, 1876 (39 & 40 Vict. c. 25).
- † Burghs of Barony (Scotland) Act, 1795 (35 Geo. 3, c. 122).
- Burial Acts, 1852 to 1885.

\* Repealed.

† Given by the Short Titles Act, 1896.

¶ Collective title given by or under the Short Titles Act, 1896. c

§ Given by the Act.

- † Burial of Drowned Persons Act, 1808 (48 Geo. 3, c. 75).
- † " " " " 1886 (49 & 50 Vict. c. 20).
- † " (Ireland) Acts, 1824 to 1868.
- † " Ground Act, 1816 (56 Geo. 3, c. 141).
- † " Grounds (Scotland) Acts, 1853 to 1886.
- Burke's Act (22 Geo. 3, c. 75).
- † Butter Trade (Ireland) Act, 1812 (52 Geo. 3, c. 134).
- † " " " " 1827 (7 & 8 Geo. 4, c. 61).
- † " " " " 1829 (10 Geo. 4, c. 41).
  
- \* Cairns' (Lord) Act (21 & 22 Vict. c. 27).
- † Calendar Act, 1751 (25 Geo. 2, c. 30).
- † " New Style Act, 1750 (24 Geo. 2, c. 23).
- † Cambridge University Act, 1856 (19 & 20 Vict. c. 88).
- † " " " " 1858 (21 & 22 Vict. c. 11).
- Cameron's (Dir.) Act (39 & 40 Vict. c. 26).
- Campbell's (Lord) Acts, (1) 6 & 7 Vict. c. 96; and 8 & 9 Vict. c. 75 (libel); (2) 9 & 10 Vict. c. 93 (*actio personalis*); (3) 20 & 21 Vict. c. 83 (obscene publications).
- Canal Boats Acts, 1877 and 1884. See 47 & 48 Vict. c. 75.
- † " (Carriers) Act, 1845 (8 & 9 Vict. c. 42).
- † " " " " 1847 (10 & 11 Vict. c. 94).
- † " Tolls Act, 1845 (8 & 9 Vict. c. 28).
- † Canals (Ireland) Act, 1816 (56 Geo. 3, c. 55).
- † " Offences Act, 1840 (3 & 4 Vict. c. 50).
- † Capital Punishment (Ireland) Act, 1842 (5 & 6 Vict. c. 28).
- Cardwell's Acts (17 & 18 Vict. c. 31), Railway and Canal Traffic; (34 & 35 Vict. c. 86, Army).
- Carlisle, Statute of (15 Edw. 2).
- † Carriers Act, 1830 (11 Geo. 4 & 1 Will. 4, c. 68).
- Catallis felonum, Statutum de (temp. incert.)*; 1 Rev. Statt. (2nd ed.), 84.
- † Cathedral Statutes Act, 1707 (6 Anne, c. 75).
- † Cathedrals Act, 1864 (27 & 28 Vict. c. 70).
- † " " Amendment Act, 1873 (36 & 37 Vict. c. 39).
- Catholic Emancipation Act (10 Geo. 4, c. 7).
- † Cattle Theft (Scotland) Act, 1747 (21 Geo. 2, c. 34).
- † Cayman Islands Act, 1863 (26 & 27 Vict. c. 31).
- † Central Criminal Court Act, 1834 (4 & 5 Will. 4, c. 36).
- † " " " " 1837 (7 Will. 4 & 1 Vict. c. 77).
- † " " " " 1846 (9 & 10 Vict. c. 24).
- † " " " " 1856 (19 & 20 Vict. c. 16).
- § " " " " Prisons Act, 1881 (44 & 45 Vict. c. 64).
- † " " Lunatic Asylum (Ireland) Act, 1845 (8 & 9 Vict. c. 107).
- † Cessio (Scotland) Act, 1836 (6 & 7 Will. 4, c. 56).
- † *Cestui que vie* Act, 1707 (6 Anne, c. 72).

\* Repealed.

† Given by the Short Titles Act, 1896.

§ Collective title given by or under the Short Titles Act, 1896.

§ Given by the Act.



- † Church Discipline Act, 1840 (3 & 4 Vict. c. 86).
- † „ Patronage Act, 1737 (11 Geo. 2, c. 17).
- † „ „ 1846 (9 & 10 Vict. c. 88).
- † „ „ 1870 (33 & 34 Vict. c. 39).
- † „ of Scotland Courts Act, 1863 (26 & 27 Vict. c. 47).
- † „ Patronage (Scotland) Act, 1718 (5 Geo. 1, c. 29).
- † „ „ 1874 (37 & 38 Vict. c. 82).
- § „ Seats Act, 1872 (35 & 36 Vict. c. 49).
- † „ Services (Wales) Act, 1863 (26 & 27 Vict. c. 82).
- ¶ Cinque Ports Acts, 1811 to 1872.
- Circuit Courts (Scotland) Act, 1709 (8 Anne, c. 16).
- „ „ 1828 (9 Geo. 4, c. 29).
- Circumspèctè agatis* (13 Edw. 1; 1 Rev. Statt. (2nd ed.), 37).
- † Citations (Scotland) Act, 1846 (9 & 10 Vict. c. 67).
- † Civil Bill Court (Ireland) Act, 1851 (14 & 15 Vict. c. 57).
- † „ „ 1865 (28 & 29 Vict. c. 1).
- † „ Courts (Ireland) Act, 1874 (37 & 38 Vict. c. 66); and see
- County Courts (Ireland) Acts.
- † „ List Act, 1837 (1 & 2 Vict. c. 2).
- † „ „ and Secret Service Money Act, 1782 (22 Geo. 3, c. 82).
- † „ „ Audit Act, 1816 (56 Geo. 3, c. 46).
- † „ Procedure Act, 1833 (3 & 4 Will. 4, c. 42).
- † „ Rights of Convicts Act, 1828 (9 Geo. 4, c. 32).
- Clarendon, Constitutions of, 1164 (10 Hen. 2). See 1 Reeves, Eng. Law, p. 126.
- Clay's (Sir W.) Act (14 & 15 Vict. c. 14).
- § Clergy Discipline Act, 1892 (55 & 56 Vict. c. 32).
- † „ Endowments (Canada) Act, 1791 (31 Geo. 3, c. 31).
- † „ Ordination Act, 1804 (44 Geo. 3, c. 43).
- † „ Residence Act, 1826 (7 Geo. 4, c. 66).
- † „ Residences Repair Act, 1776 (17 Geo. 3, c. 53).
- † „ „ 1780 (21 Geo. 3, c. 66).
- † „ Resignation Bonds Act, 1828 (9 Geo. 4, c. 94).
- † Clerk of Assize (Ireland) Act, 1821 (1 & 2 Geo. 4, c. 54).
- † „ of the Council Act, 1859 (22 & 23 Vict. c. 1).
- † „ of the Crown (Ireland) Act, 1832 (2 & 3 Will. 4, c. 48).
- † „ of the Parliaments Act, 1824 (5 Geo. 4, c. 82).
- † Clerks of the Peace (Fees) Act, 1817 (57 Geo. 3, c. 91).
- † Coal Trade (Ireland) Act, 1832 (2 & 3 Will. 4, c. 21).
- Cockburn's Act (16 & 17 Vict. c. 119).
- “Coinage Acts, 1870 and 1891.” See 54 & 55 Vict. c. 72.
- † „ (Colonial Offences) Act, 1853 (16 & 17 Vict. c. 48).
- † „ Offences Act, 1861 (24 & 25 Vict. c. 99).
- † College of Physicians (Ireland) Act, 1862 (25 & 26 Vict. c. 15).
- † Collieries and Mines Act, 1800 (39 & 40 Geo. 3, c. 77).
- † Colliers (Scotland) Act, 1799 (39 Geo. 3, c. 56).
- † Colonial Acts Confirmation Act, 1863 (26 & 27 Vict. c. 84).
- § „ „ „ 1894 (56 & 57 Vict. c. 72).

\* Repealed.

† Given by the Short Titles Act, 1896.

¶ Collective title given by or under the Short Titles Act, 1896.

§ Given by the Act.

- † Colonial Affidavits Act, 1859 (22 & 23 Vict. c. 1<sup>2</sup>).  
 \* „ Attorneys Relief Acts (20 & 21 Vict. c. 39; 37 & 38 Vict. c. 41). See 37 & 38 Vict. c. 41; 63 & 64 Vict. c. 14.  
 † „ Bishops Act, 1852 (15 & 16 Vict. c. 52).  
 † „ „ 1853 (16 & 17 Vict. c. 49).  
 § „ Clergy Act, 1874 (37 & 38 Vict. c. 77).  
 † „ Copyright Act, 1847 (10 & 11 Vict. c. 95).  
 § „ Fortifications Act, 1877 (40 & 41 Vict. c. 23).  
 † „ Governors (Pensions) Act, 1865 (28 & 29 Vict. c. 113).  
 † „ Inland Post Office Act, 1849 (12 & 13 Vict. c. 66).  
 † „ Laws Validity Act, 1865 (28 & 29 Vict. c. 63).  
 † „ Letters Patent Act, 1863 (26 & 27 Vict. c. 76).  
 † „ Marriages Act, 1865 (28 & 29 Vict. c. 64).  
 § „ Naval Defence Act, 1865 (28 & 29 Vict. c. 14).  
 † „ Officers Leave of Absence Act, 1782 (22 Geo. 3, c. 75).  
 † „ „ 1894 (57 & 58 Vict. c. 17).  
 † „ Offices Act, 1830 (1 Will. 4, c. 4).  
 § „ Prisoners Removal Act, 1869 (32 & 33 Vict. c. 10).  
 § „ „ 1884 (47 & 48 Vict. c. 31).  
 § „ Probates Act, 1892 (55 & 56 Vict. c. 6).  
 § „ Solicitors Act, 1900 (63 & 64 Vict. c. 14).  
 § „ Stock Acts, 1877 and 1892. See 55 & 56 Vict. c. 35.  
 † Colonies Evidence Act, 1843 (6 & 7 Vict. c. 22).  
 † Commissariat Accounts Act, 1821 (1 & 2 Geo. 4, c. 121).  
 † Commissary Courts (Scotland) Act, 1823 (4 Geo. 4, c. 97).  
 † Commissioners for Oaths (Ireland) Act, 1872 (35 & 36 Vict. c. 75).  
 † „ of Sewers Act, 1708 (7 Anne, c. 33).  
 † „ of Supply (Scotland) Act, 1857 (20 Vict. c. 11).  
 † „ of Woods (Audit) Act, 1844 (7 & 8 Vict. c. 89).  
 † „ of Works Act, 1852 (15 & 16 Vict. c. 28).  
 † Common Fields Exchange Act, 1834 (4 & 5 Will. 4, c. 30).  
 † „ Law Courts Act, 1852 (15 & 16 Vict. c. 73).  
 † „ „ Office (Ireland) Act, 1844 (7 & 8 Vict. c. 107).  
 † „ „ Procedure (Ireland) Act, 1821 (1 & 2 Geo. 4, c. 53).  
 † „ „ „ „ 1860 (23 & 24 Vict. c. 82).  
 (The other Common Law Procedure Acts have short titles given by each Act.)  
 ¶ Companies Acts, 1862 to 1900.  
 ¶ „ „ Clauses Acts, 1845 to 1889.  
 § „ Seals Act, 1864 (27 & 28 Vict. c. 19).  
 † Compound Householders Act, 1851 (14 & 15 Vict. c. 14).  
 † Concealment of Birth (Scotland) Act, 1809 (49 Geo. 3, c. 14).  
 Confirmatio chartarum, 1297 (25 Edw. 1; 1 Rev. Statt. (2nd ed.), 53).  
 † Confirmation of Executors (Scotland) Act, 1823 (4 Geo. 4, c. 98).  
 † „ „ „ „ 1858 (21 & 22 Vict. c. 56).  
 ¶ Congested Districts Board (Ireland) Acts.  
 † Consecration of Churchyards Act, 1868 (31 & 32 Vict. c. 47).

\* Repealed.

† Given by the Short Titles Act, 1896.

¶ Collective title given by or under the Short Titles Act, 1896.

§ Given by the Act.

- † Consolidated Fund Act, 1816 (56 Geo. 3, c. 98).  
 „ „ Permanent Charges Redemption Acts, 1873 and 1883. See 46 & 47 Vict. c. 1.  
*Conspiratoribus, ordinatio de* (33 Edw. 1, st. 1).  
 „ *statutum de (incert. temp.)*, 1 Rev. Statt. (2nd ed.), 777.
- † Constables' Expenses Act, 1801 (41 Geo. 3, c. 78).  
 † „ Protection Act, 1750 (24 Geo. 2, c. 44).  
 † „ (Scotland) Act, 1875 (38 & 39 Vict. c. 47).  
 ¶ Constabulary (Ireland) Acts, 1836 to 1885.  
 † Consular Advances Act, 1825 (6 Geo. 4, c. 87).  
 § „ Salaries and Fees Act, 1891 (54 & 55 Vict. c. 36).  
 † Contempt of Court Act, 1832 (2 & 3 Will. 4, c. 58).  
 † Contingent Remainders Act, 1877 (40 & 41 Vict. c. 33).  
 † Conveyance of Offenders (Ireland) Act, 1819 (59 Geo. 3, c. 92).  
 † Conveyances (Ireland) Act, 1864 (27 & 28 Vict. c. 8).  
 ¶ Conveyancing Acts, 1881 to 1892.  
 † Convict Prisons Act, 1850 (13 & 14 Vict. c. 39).  
 † „ „ 1853 (16 & 17 Vict. c. 121).  
 † „ „ (Ireland) Act, 1854 (17 & 18 Vict. c. 76).  
 ¶ Copyright Acts, 1734 to 1888; and see 49 & 50 Vict. c. 33.  
 † „ Act, 1775 (15 Geo. 3, c. 53).  
 † „ „ 1836 (6 & 7 Will. 4, c. 110).  
 † „ „ 1842 (5 & 6 Vict. c. 45).  
 § „ (Musical Compositions) Act, 1882 (45 & 46 Vict. c. 40).  
 § „ „ „ „ 1888 (51 & 52 Vict. c. 17).  
 † Corn Exportation Act, 1737 (11 Geo. 2, c. 22).  
 ¶ Coroners (Ireland) Acts, 1829 to 1881.  
 † „ Act, 1843 (6 & 7 Vict. c. 12).  
 † „ „ 1844 (7 & 8 Vict. c. 92).  
 † „ „ 1846 (9 & 10 Vict. c. 37).  
 § „ „ 1887 (50 & 51 Vict. c. 71).  
 „ Acts, 1887 and 1892 (50 & 51 Vict. c. 71; 55 & 56 Vict. c. 56).
- † Corporate Property (Elections) Act, 1832 (2 & 3 Will. 4, c. 69).  
 \* Corporation Act (13 Chas. 2, stat. 2, c. 1).  
 Corresponding Societies Acts (39 Geo. 3, c. 79; 57 Geo. 3, c. 19; 9 & 10 Vict. c. 30).  
 Corrupt and Illegal Practices Prevention Acts, 1883 and 1895. See 58 & 59 Vict. c. 40.
- † „ Practices Prevention Act, 1863 (26 & 27 Vict. c. 29).  
 „ „ „ „ Acts, 1863 to 1883. See 46 & 47 Vict. c. 51, s. 65, Sch. 3.
- † Corruption of Blood Act, 1814 (54 Geo. 3, c. 145).  
 † Costs Act, 1818 (58 Geo. 3, c. 38).  
 † Council of India Act, 1876 (39 & 40 Vict. c. 7).  
 § Counterfeit Medal Act, 1883 (46 & 47 Vict. c. 45).

\* Repealed.

† Given by the Short Titles Act, 1896.

¶ Collective title given by or under the Short Titles Act, 1896.

§ Given by the Act.

- † Counties and Boroughs (Ireland) Act, 1840 (3 & 4 Vict. c. 109).  
 † „ (Detached Parts) Act, 1839 (2 & 3 Vict. c. 82).  
 † „ „ „ 1844 (7 & 8 Vict. c. 61).  
 † „ of Cities Act, 1798 (38 Geo. 3, c. 52).  
 † „ „ „ 1811 (51 Geo. 3, c. 100).  
 † Country Bankers Act, 1826 (7 Geo. 4, c. 46).  
 † County and Borough Police Act, 1856 (19 & 20 Vict. c. 69).  
 † „ „ „ 1859 (22 & 23 Vict. c. 32).  
 † „ and City of Dublin Grand Juries Act, 1873 (36 & 37 Vict. c. 65).  
 † „ Buildings Act, 1826 (7 Geo. 4, c. 63).  
 † „ „ „ 1837 (7 Will. 4 & 1 Vict. c. 24).  
 † „ „ „ 1847 (10 & 11 Vict. c. 28).  
 † „ Cess (Ireland) Act, 1848 (11 & 12 Vict. c. 32).  
 † „ Coroners Act, 1860 (23 & 24 Vict. c. 116).  
 § „ Courts Act, 1888 (51 & 52 Vict. c. 43).  
 § „ „ „ 1903 (3 Edw. 7, c. 42).  
 ¶ „ „ (Ireland) Acts, 1851 to 1889.  
 \* „ Dublin Baronies Act, 1838 (1 & 2 Vict. c. 115).  
 † „ „ Grand Jury Act, 1844 (7 & 8 Vict. c. 106).  
 † „ Elections (Ireland) Act, 1862 (25 & 26 Vict. c. 62).  
 † „ „ (Scotland) Act, 1853 (16 & 17 Vict. c. 28).  
 † „ Electors Act, 1888 (51 & 52 Vict. c. 10).  
 † „ Fermanagh Baronies Act, 1837 (7 Will. 4 & 1 Vict. c. 82).  
 ¶ „ Infirmaries (Ireland) Acts, 1805 to 1833.  
 † „ Institutions (Ireland) Act, 1838 (1 & 2 Vict. c. 116).  
 † „ Police Act, 1839 (2 & 3 Vict. c. 93).  
 † „ „ „ 1840 (3 & 4 Vict. c. 88).  
 † „ „ „ 1857 (20 Vict. c. 2).  
 § „ Property Acts, 1858 and 1871. See 34 Vict. c. 14, s. 3.  
 † „ Rates Act, 1738 (12 Geo. 2, c. 29).  
 † „ „ 1815 (55 Geo. 3, c. 51).  
 † „ „ 1844 (7 & 8 Vict. c. 33).  
 † „ „ 1852 (15 & 16 Vict. c. 81).  
 † „ Surveyors (Ireland) Act, 1862 (25 & 26 Vict. c. 106).  
 †\* „ Treasurers (Ireland) Act, 1823 (4 Geo. 4, c. 33).  
 † „ „ „ „ 1837 (7 Will. 4 & 1 Vict. c. 54).  
 † „ „ „ „ 1838 (1 & 2 Vict. c. 53).  
 † „ „ „ „ 1867 (30 & 31 Vict. c. 46).  
 † „ Works (Ireland) Act, 1846 (9 & 10 Vict. c. 2).  
 † Court Funds Act, 1829 (10 Geo. 4, c. 13).  
 † Court of Chancery Act—  
     1841 (5 Vict. c. 5).                      1852 (15 & 16 Vict. c. 87).  
     1842 (5 & 6 Vict. c. 103).            1855 (18 & 19 Vict. c. 134).  
     1851 (14 & 15 Vict. c. 83).           1860 (23 & 24 Vict. c. 149).  
     1852 (15 & 16 Vict. c. 80).  
 † Court of Chancery and Exchequer Funds (Ireland) Act, 1868 (31 & 32 Vict. c. 88).

\* Repealed.

† Given by the Short Titles Act, 1896.

¶ Collective title given by or under the Short Titles Act, 1896.

§ Given by the Act.



- † Court of Chancery (Ireland) Act, 1823 (4 Geo. 4, c. 61).  
 † „ „ „ „ 1836 (6 & 7 Will. 4, c. 74).  
 † „ „ „ of Lancaster Act, 1850 (13 & 14 Vict. c. 43).  
 † „ „ „ of Probate Act, 1857 (20 & 21 Vict. c. 77).  
 † „ „ „ (Ireland) Act, 1861 (24 & 25 Vict. c. 111).  
 ¶ „ „ „ of Session Acts, 1808 to 1895.  
 † „ „ „ Act, 1723 (10 Geo. 1, c. 19).  
 † „ „ „ Adjournment Act, 1762 (2 Geo. 3, c. 27).  
 † „ „ „ Records Act, 1815 (55 Geo. 3, c. 70).  
 † Courthouses (Ireland) Act—  
     1815 (55 Geo. 3, c. 89).      1840 (3 & 4 Vict. c. 102).  
     1818 (58 Geo. 3, c. 31).  
 † Courts of Justice (Scotland) Act, 1825 (6 Geo. 4, c. 86).  
 § „ „ „ of Law Fees Act, 1867 (30 & 31 Vict. c. 122).  
 § „ „ „ „ (Scotland) Act, 1868 (31 & 32 Vict. c. 55).  
 \* Coventry Act (22 & 23 Chas. 2, c. 1).  
     Cozens-Hardy's Act (54 & 55 Vict. c. 73).  
 \* Cranworth's (Lord) Acts (23 & 24 Vict. c. 11) (schools); (23 & 24  
     Vict. c. 145) (property).  
     Crimes Act (i) (50 & 51 Vict. c. 20).  
 † Criminal Costs (Dublin) Act, 1815 (55 Geo. 3, c. 91).  
 § „ „ „ Evidence Act, 1898 (61 & 62 Vict. c. 36).  
 † „ „ „ Jurisdiction Act, 1802 (42 Geo. 3, c. 85).  
 † „ „ „ Justice Act, 1855 (18 & 19 Vict. c. 126).  
 † „ „ „ „ 1856 (19 & 20 Vict. c. 118).  
 † „ „ „ „ Administration Act, 1851 (14 & 15 Vict. c. 55).  
 † „ „ „ Law Act, 1826 (7 Geo. 4, c. 64).  
 † „ „ „ „ 1827 (7 & 8 Geo. 4, c. 28).  
 † „ „ „ Law Amendment Act, 1867 (30 & 31 Vict. c. 35).  
 § „ „ „ „ 1885 (48 & 49 Vict. c. 69).  
 „ „ „ „ Consolidation Acts, 1861 (24 & 25 Vict. cc. 94—100).  
 † „ „ „ (India) Act, 1828 (9 Geo. 4, c. 74).  
 † „ „ „ (Ireland) Act, 1828 (9 Geo. 4, c. 54).  
 † „ „ „ (Scotland) Act, 1829 (10 Geo. 4, c. 38).  
 † „ „ „ „ 1830 (11 Geo. 4 & 1 Will. 4, c. 37).  
 † „ „ „ Libel Act, 1819 (60 Geo. 3 & 1 Geo. 4, c. 8).  
 † „ „ „ Lunatic Asylums Act, 1860 (23 & 24 Vict. c. 75).  
 † „ „ „ Lunatics Act, 1800 (39 & 40 Geo. 3, c. 94).  
 † „ „ „ „ 1838 (1 & 2 Vict. c. 14).  
 † „ „ „ (Ireland) Act, 1838 (1 & 2 Vict. c. 27).  
 † „ „ „ Procedure Acts—  
     1848 (11 & 12 Vict. c. 46).      1853 (16 & 17 Vict. c. 30).  
     1851 (14 & 15 Vict. c. 100).      1865 (28 & 29 Vict. c. 18).  
 † „ „ „ Prosecution Fees (Ireland) Act, 1809 (49 Geo. 3, c. 101).  
     Cross's Act (38 & 39 Vict. c. 36).  
 † Crown Cases Act, 1848 (11 & 12 Vict. c. 78).  
 † „ „ „ Claims Limitation (Ireland) Act, 1808 (48 Geo. 3, c. 47).  
 † „ „ „ Debtors Act, 1785 (25 Geo. 3, c. 35).

\* Repealed.

† Given by the Short Titles Act, 1896.

¶ Collective title given by or under the Short Titles Act, 1896.

§ Given by the Act.

- † Crown Debts Act, 1801 (41 Geo. 3, c. 90).
- † " " " 1824 (5 Geo. 4, c. 111).
- † " " and Judgments Act, 1860 (23 & 24 Vict. c. 115).
- † " Estates Paving Act, 1851 (14 & 15 Vict. c. 95).
- † " Lands Act—
- 1702 (1 Anne, c. 1). 1823 (4 Geo. 4, c. 18).
- 1819 (59 Geo. 3, c. 94). 1825 (6 Geo. 4, c. 17).
- ¶ " Lands Acts, 1829 to 1894.
- † " " (Allotments) Act, 1831 (1 & 2 Will. 4, c. 59).
- † " " (Copyhold) Act, 1851 (14 & 15 Vict. c. 46).
- † " " (Ireland) Act, 1822 (3 Geo. 4, c. 63).
- † " " (Scotland) Act, 1832 (2 & 3 Will. 4, c. 112).
- † " " " 1833 (3 & 4 Will. 4, c. 69).
- † " " " 1835 (5 & 6 Will. 4, c. 58).
- † " Office Acts (40 & 41 Vict. c. 2; 53 & 54 Vict. c. 2).
- † " Pensioners Disqualification Act, 1715 (1 Geo. 1, stat. 2, c. 56).
- † " Pre-emption of Lead Ore Act, 1815 (55 Geo. 3, c. 134).
- † " Private Estates Act, 1880 (39 & 40 Vict. c. 88).
- † " Revenues (Colonies) Act, 1852 (15 & 16 Vict. c. 39).
- † " Suits Act, 1769 (9 Geo. 3, c. 16).
- † " " 1855 (18 & 19 Vict. c. 90).
- † " " 1861 (24 & 25 Vict. c. 62).
- † " " (Isle of Man) Act, 1862 (25 & 26 Vict. c. 14).
- † " " (Scotland) Act, 1857 (20 & 21 Vict. c. 44).
- † Cruelty to Animals Act, 1849 (12 & 13 Vict. c. 92).
- † " " " 1854 (17 & 18 Vict. c. 60).
- § " " 1876 (39 & 40 Vict. c. 77).
- † " " (Scotland) Act, 1850 (13 & 14 Vict. c. 92).
- † Custody of Infants Act, 1873 (36 & 37 Vict. c. 12).
- † Customs Act, 1842 (5 & 6 Vict. c. 47).
- † " " 1849 (12 & 13 Vict. c. 90).
- † " (Amendment) Act, 1842 (5 & 6 Vict. c. 56).
- § " Consolidation Act, 1876 (39 & 40 Vict. c. 36).
- † " (Repeal) Act, 1833 (3 & 4 Will. 4, c. 50).
- † Custos Rotulorum (Ireland) Act, 1831 (1 & 2 Will. 4, c. 17).
- † Cutlery Trade Act, 1819 (59 Geo. 3, c. 7).
- † Dean and New Forests Act, 1808 (48 Geo. 3, c. 72).
- † " Forest Act, 1667 (19 & 20 Chas. 2, c. 8).
- † " " (Mines) Act, 1838 (1 & 2 Vict. c. 43).
- § Debtors Act, 1869 (32 & 33 Vict. c. 62).
- § " " 1878 (41 & 42 Vict. c. 54).
- † " Imprisonment Act, 1758 (32 Geo. 2, c. 28).
- † " (Ireland) Act, 1840 (3 & 4 Vict. c. 105).
- † " " 1872 (35 & 36 Vict. c. 57). See 41 & 42 Vict. c. 54.
- † " (Scotland) Act, 1838 (1 & 2 Vict. c. 114).

\* Repealed.

† Given by the Short Titles Act, 1896.

¶ Collective title given by or under the Short Titles Act, 1896.

§ Given by the Act.

- † Debts Recovery Act, 1830 (11 Geo. 4 & 1 Will. 4, c. 47).  
 † " " " " 1839 (2 & 3 Vict. c. 60).  
 † " " " " 1848 (11 & 12 Vict. c. 87).  
 † " Securities (Scotland) Act, 1856 (19 & 20 Vict. c. 91).  
*De Catallis Felonum (stat. incert. temp.)*, 1 Rev. Statt. (2nd ed.), 34.  
 § Declaration of Title Act, 1862 (25 & 26 Vict. c. 67).  
*De Donis Conditionalibus, statutum de* (3 Edw. 1, Stat. West. 2, c. 1).  
 ¶ Defence Acts, 1842 to 1873.  
 † Demise of the Crown Act, 1727 (1 Geo. 2, stat. 1, c. 5).  
 † " " " " 1830 (11 Geo. 4 & 1 Will. 4, c. 43).  
 † " " " " 1837 (7 Will. 4 & 1 Vict. c. 31).  
 Denison's Act (18 & 19 Vict. c. 34).  
 Denman's (Hon. G.) Act (28 & 29 Vict. c. 18).  
 " (Lord) Act (6 & 7 Vict. c. 85).  
 † Deputy-Speaker Act, 1855 (18 & 19 Vict. c. 84).  
 † Deserted Tenements Act, 1817 (57 Geo. 3, c. 52).  
 † Destruction of Property (Scotland) Act, 1789 (29 Geo. 3, c. 46).  
 † Detached Portions of Counties (Ireland) Act, 1871 (34 & 35 Vict. c. 106).  
 † Diocesan Boundaries Act, 1872 (35 & 36 Vict. c. 14).  
 † Diplomatic Privileges Act, 1708 (7 Anne, c. 12).  
 † Discharged Prisoners Aid Act, 1862 (25 & 26 Vict. c. 44).  
 Diseases of Animals Acts, 1894 to 1903 (57 & 58 Vict. c. 57; 59 & 60 Vict. c. 14 (see sect. 3); 3 Edw. 7, c. 43 (see sect. 5)).  
 † Disorderly Houses Act, 1751 (25 Geo. 2, c. 36).  
 † " " " " 1818 (58 Geo. 3, c. 70).  
 † Dissenters (Ireland) Act, 1817 (57 Geo. 3, c. 70).  
 † Distress Costs Act, 1817 (57 Geo. 3, c. 93).  
 † " " " " 1827 (7 & 8 Geo. 4, c. 17).  
 † " for Rates Act, 1849 (12 & 13 Vict. c. 14).  
 † " for Rent Act, 1737 (11 Geo. 2, c. 19).  
 † Distribution, Statute of (1670, 22 & 23 Chas. 2, c. 10); 1 Rev. Statt. (2nd ed.), 657.  
 † Disused Public Buildings (Ireland) Act, 1808 (48 Geo. 3, c. 113).  
 † Division of Counties Act, 1828 (9 Geo. 4, c. 43).  
 † Divorce Bills Evidence Act, 1820 (1 Geo. 4, c. 101).  
 † Dockyards, &c. Protection Act, 1772 (12 Geo. 3, c. 24). See 2 Steph. Hist. Cr. p. 293.  
 Documentary Evidence Acts, 1868 to 1895. See 58 & 59 Vict. c. 9.  
 Dog Licences Act, 1867 (30 & 31 Vict. c. 5).  
 † Dogs Act, 1865 (28 & 29 Vict. c. 60).  
 † " (Ireland) Act, 1862 (25 & 26 Vict. c. 59).  
 † " " " " 1867 (30 & 31 Vict. c. 116).  
 † " (Scotland) Act, 1863 (26 & 27 Vict. c. 100).  
 † Domicile Act, 1861 (24 & 25 Vict. c. 121).  
*Donis conditionalibus, statutum de* (3 Edw. 1, Stat. West. 2, c. 1); 1 Rev. Statt. (2nd ed.), 18.

\* Repealed.

† Given by the Short Titles Act, 1896.

¶ Collective title given by or under the Short Titles Act, 1896.

§ Given by the Act.

- ¶ Drainage and Navigation (Ireland) Acts, 1842 to 1857.  
 „ and Improvement of Lands (Ireland) Acts, 1863 to 1892.  
 See 59 & 60 Vict. c. 14.
- † Dramatic Copyright Act, 1833 (3 & 4 Will. 4, c. 15).  
 † Drouly Fund Act, 1838 (1 & 2 Vict. c. 89).  
 † Dublin Collector General of Rates Act, 1870 (33 & 34 Vict. c. 11).  
 † „ Corporation Act, 1849 (12 & 13 Vict. c. 85).  
 „ „ „ 1850 (13 & 14 Vict. c. 81).  
 † „ Justices Act, 1824 (5 Geo. 4, c. 102).  
 „ „ „ 1840 (3 & 4 Vict. c. 103).  
 † „ Police Magistrates Act, 1808 (48 Geo. 3, c. 140).  
 † „ Revising Barristers Act, 1857 (20 & 21 Vict. c. 68).  
 † „ „ „ 1861 (24 & 25 Vict. c. 56).  
 † Duchy of Cornwall Act, 1824 (5 Geo. 4, c. 78).  
 „ „ Management Acts, 1863—1893 (26 & 27 Vict.  
 c. 49; 31 & 32 Vict. c. 35; 56 & 57 Vict. c. 20).  
 † Durham Chancery Act (32 & 33 Vict. c. 84).  
 ¶ Durham County Palatine Acts, 1836 to 1889.  
 † „ „ Act—  
 1836 (6 & 7 Will. 4, c. 29). 1842 (5 & 6 Vict. c. 24).  
 1837 (7 Will. 4 & 1 Vict. c. 25). 1848 (11 & 12 Vict. c. 113).  
 1839 (2 & 3 Vict. c. 78). 1867 (30 & 31 Vict. c. 95).  
 † Duties on Offices Act, 1825 (6 Geo. 4, c. 9).  
 † „ „ and Pensions Act, 1836 (6 & 7 Will. 4, c. 97).  
 † Dyeing Trade (Frauds) Act, 1783 (23 Geo. 3, c. 15).
- † Earldom of Mar Restitution Act, 1885 (48 & 49 Vict. c. 48).  
 † East India Annuity Funds Act, 1874 (37 & 38 Vict. c. 12).  
 † East India Company Act—  
 1770 (10 Geo. 3, c. 47). 1786 (26 Geo. 3, c. 57).  
 1772 (13 Geo. 3, c. 63). 1793 (33 Geo. 3, c. 52).  
 1780 (21 Geo. 3, c. 70). 1797 (37 Geo. 3, c. 142).  
 1784 (24 Geo. 3, sess. 2, c. 25). 1813 (53 Geo. 3, c. 155).  
 † East India Company Bonds Act, 1811 (51 Geo. 3, c. 64).  
 ¶ „ „ „ Money Acts, 1786 to 1858 (59 & 60 Vict. c. 14),  
 viz. :—  
 1786 (26 Geo. 3, c. 62). 1793 (33 Geo. 3, c. 47).  
 1788 (28 Geo. 3, c. 29). 1794 (34 Geo. 3, c. 41).  
 1789 (29 Geo. 3, c. 65). 1811 (51 Geo. 3, c. 64).  
 1791 (31 Geo. 3, c. 11). 1858 (21 & 22 Vict. c. 3).  
 † East India Contracts Act, 1870 (33 & 34 Vict. c. 59).  
 † „ „ Loans Act, 1858 (21 & 22 Vict. c. 3).  
 ¶ „ „ „ Acts, 1859 to 1893.  
 † „ „ Officers Act, 1826 (7 Geo. 4, c. 56).  
 † East Indian Railways (Redemption of Annuities) Act, 1879 (42 & 43  
 Vict. c. 43).

\* Repealed.

† Given by the Short Titles Act, 1896.

¶ Collective title given by or under the Short Titles Act, 1896.

‡ Given by the Act.

- ¶ Ecclesiastical Commissioners Acts, 1840 to 1885.
- † „ Corporation Act, 1832 (2 & 3 Will. 4, c. 80).
- ¶ „ Courts Acts, 1787 to 1860. See 59 & 60 Vict. c. 14.
- † „ Dilapidations Act, 1872 (35 & 36 Vict. c. 96).
- † „ Fees Act, 1867 (30 & 31 Vict. c. 135).
- § „ „ 1875 (38 & 39 Vict. c. 76).
- † „ Houses of Residence Act, 1842 (5 & 6 Vict. c. 26).
- † „ Jurisdiction Act, 1847 (10 & 11 Vict. c. 98).
- † „ „ 1858 (21 & 22 Vict. c. 50).
- † „ Leases Act—
- 1765 (5 Geo. 3, c. 17). 1836 (6 & 7 Will. 4, c. 20).
- 1800 (39 & 40 Geo. 3, c. 41). 1842 (5 & 6 Vict. c. 27).
- † Ecclesiastical Leases Act, 1861 (24 & 25 Vict. c. 105).
- † „ „ 1862 (25 & 26 Vict. c. 52).
- † „ „ 1865 (28 & 29 Vict. c. 57).
- † „ „ Amendment Act, 1836 (6 & 7 Will. 4, c. 64).
- † „ Leasing Act, 1842 (5 & 6 Vict. c. 108).
- † „ Proctors (Ireland) Act, 1814 (54 Geo. 3, c. 68).
- † „ Suits Act, 1787 (27 Geo. 3, c. 44).
- \* „ Titles Act (14 & 15 Vict. c. 60).
- † „ „ 1871 (34 & 35 Vict. c. 53).
- † Education Department Act, 1856 (19 & 20 Vict. c. 116).
- ¶ „ (Scotland) Acts, 1892 to 1893.
- † Ejection and Distress (Ireland) Act, 1846 (9 & 10 Vict. c. 111).
- † Elders' Widows Fund (India) Act, 1878 (41 & 42 Vict. c. 47).
- † Election Commissioners Act, 1852 (15 & 16 Vict. c. 57).
- † Elections Fraudulent Conveyances Act, 1711 (10 Anne, c. 31).
- „ in Recess Act, 1863 (26 & 27 Vict. c. 20).
- † „ (Ireland) Act, 1862 (25 & 26 Vict. c. 92).
- ¶ Elementary Education Acts, 1870 to 1893.
- Ellenborough's (Lord) Act (43 Geo. 3, c. 59).
- † Elver Fishing Act, 1876 (39 & 40 Vict. c. 34).
- † Embezzlement by Collectors Act, 1810 (50 Geo. 3, c. 59).
- ¶ Endowed Schools Acts, 1869 to 1889.
- † „ „ (Ireland) Act, 1813 (53 Geo. 3, c. 107).
- † „ „ 1822 (3 Geo. 4, c. 79).
- † „ „ 1830 (11 Geo. 4 & 1 Will. 4, c. 56).
- † Engraving Copyright Act, 1734 (8 Geo. 2, c. 13).
- „ „ 1766 (7 Geo. 3, c. 38).
- ¶ Entail Acts (Scotland).
- † „ Act, 1685 (c. 26, Scots Act).
- † Episcopal and Capitular Estates Act—
- 1851 (14 & 15 Vict. c. 104). 1859 (22 & 23 Vict. c. 46).
- 1854 (17 & 18 Vict. c. 116). 1861 (24 & 25 Vict. c. 131).
- † Episcopal Church (Scotland) Act, 1864 (27 & 28 Vict. c. 94).
- † Erasures in Deeds (Scotland) Act, 1836 (6 & 7 Will. 4, c. 33).
- \* Essoins, Statute of (12 Edw. 2, stat. 2).
- † Estreats Act, 1716 (3 Geo. 1, c. 15).
- † European Forces (India) Act, 1860 (23 & 24 Vict. c. 100).
- † Eviction (Ireland) Act, 1848 (11 & 12 Vict. c. 47).

\* Repealed.

† Given by the Short Titles Act, 1896.

¶ Collective title given by or under the Short Titles Act, 1896.

§ Given by the Act.

## ¶ Evidence Acts, 1806 to 1895.

- † " Act—  
 1843 (6 & 7 Vict. c. 85). 1851 (14 & 15 Vict. c. 99).  
 1845 (8 & 9 Vict. c. 113). 1877 (40 & 41 Vict. c. 14).

## † Evidence Amendment Act, 1853 (16 &amp; 17 Vict. c. 83).

- † " by Commission Act, 1859 (22 Vict. c. 20).  
 † " (Ireland) Act, 1815 (55 Geo. 3, c. 157).  
 † " on Commission Act, 1831 (1 Will. 4, c. 22).  
 † " (Scotland) Act, 1840 (3 & 4 Vict. c. 59).  
 † " " 1852 (15 & 16 Vict. c. 27).  
 † " " 1853 (16 & 17 Vict. c. 20).

Exchequer and Audit Department Acts, 1866 and 1889. See 52 & 53 Vict. c. 31.

" and Treasury Bills Acts, 1866 and 1877. See 40 & 41 Vict. c. 2.

- † " Bills Act, 1800 (39 & 40 Geo. 3, c. 109).  
 † " Bills and Bonds Act, 1866 (29 & 30 Vict. c. 25).  
 † " Chamber (Ireland) Act, 1820 (1 Geo. 4, c. 68).  
 † " Court Act, 1842 (5 & 6 Vict. c. 86).  
 † " " (Scotland) Act, 1707 (6 Anne, c. 53).  
 † " " " 1834 (4 & 5 Will. 4, c. 16).  
 † " Extra Receipts Act, 1868 (31 & 32 Vict. c. 9).  
 † " Statutes of the (*incert. temp.*), 1 Rev. Stat. (2nd ed.), 74.

## † Excise Act—

- 1828 (9 Geo. 4, c. 44). 1840 (3 & 4 Vict. c. 17).  
 1834 (4 & 5 Will. 4, c. 75). 1848 (11 & 12 Vict. c. 118).  
 1835 (5 & 6 Will. 4, c. 39). 1860 (23 & 24 Vict. c. 113).

## † Excise Declarations Act, 1831 (1 &amp; 2 Will. 4, c. 4).

- † " Drawback Act, 1817 (57 Geo. 3, c. 87).  
 † " Licences Act, 1825 (6 Geo. 4, c. 81).  
 † " Management Act, 1827 (7 & 8 Geo. 4, c. 53).  
 † " " 1834 (4 & 5 Will. 4, c. 51).  
 † " " 1841 (4 & 5 Vict. c. 20).  
 † " on Spirits Act, 1860 (23 & 24 Vict. c. 129).  
 † " Permit Act, 1832 (2 & 3 Will. 4, c. 16).

## † Exclusive Trading (Ireland) Act, 1846 (9 &amp; 10 Vict. c. 76).

## † Execution Act, 1844 (7 &amp; 8 Vict. c. 96).

- † " (Ireland) Act, 1848 (11 & 12 Vict. c. 28).  
 † " of Sentence (Scotland) Act, 1729 (3 Geo. 2, c. 32).

## † Executors Act, 1830 (11 Geo. 4 &amp; 1 Will. 4, c. 40).

Exemption from Impressment Act, 1739 (13 Geo. 2, c. 17).

## † Exports Act, 1786 (26 Geo. 3, c. 40).

## † " 1787 (27 Geo. 3, c. 31).

*Extenta manerii* (4 Edw. 1).

## † Extents in Aid Act, 1817 (57 Geo. 3, c. 117).

## † Extra-Parochial Places Act, 1857 (20 Vict. c. 19).

## § Factory and Workshop Act, 1901 (1 Edw. 7, c. 22).

## § Falsification of Accounts Act, 1875 (38 &amp; 39 Vict. c. 24).

\* Repealed.

† Given by the Short Titles Act, 1896.

¶ Collective title given by or under the Short Titles Act, 1896.

§ Given by the Act.

- † Fatal Accidents Act, 1846 (9 & 10 Vict. c. 93).
- † " " " " 1864 (27 & 28 Vict. c. 95).
- † Fee Farm Rents (Ireland) Act, 1851 (14 & 15 Vict. c. 20).
- † Fees for Pardons Act, 1818 (58 Geo. 3, c. 29).
- † Felony and Piracy Act, 1772 (12 Geo. 3, c. 20).
- † " Act, 1819 (59 Geo. 3, c. 27).
- † " " 1841 (4 & 5 Vict. c. 22).
- † Fever Hospitals (Ireland) Act, 1834 (4 & 5 Will. 4, c. 46).
- † Fine Arts Copyright Act, 1862 (25 & 26 Vict. c. 68).
- † Fines Act, 1833 (3 & 4 Will. 4, c. 99).
- † " by Justices Act, 1801 (41 Geo. 3, c. 85).
- † " and Recoveries Act, 1833 (3 & 4 Will. 4, c. 74).
- † " " " 1842 (5 & 6 Vict. c. 32).
- † " " (Ireland) Act, 1834 (4 & 5 Will. 4, c. 92).
- † " Statute of *Finibus levatis, statutum de, &c.* } 27 Edw. 1. See 2 Reeves, Hist. Eng. Law, p. 131.
- † Finlay's Act (53 & 54 Vict. c. 44).
- † Fires Prevention (Metropolis) Act, 1774 (14 Geo. 3, c. 78). But see *ante*, pp. 384, 454.
- † " " " 1785 (25 Geo. 3, c. 77).
- † " " " 1838 (1 & 2 Vict. c. 75).
- † Fish Carriage Act, 1762 (2 Geo. 3, c. 15).
- † Fisheries Act, 1824 (5 Geo. 4, c. 64).
- † " (Ireland) Acts, 1842 to 1898. See 59 & 60 Vict. c. 14, Sch. ii.; 61 & 62 Vict. c. 28.
- † " (Ireland) Act, 1846 (9 & 10 Vict. c. 3).
- † " (Scotland) Act, 1726 (13 Geo. 1, c. 30).
- † " " " 1756 (29 Geo. 3, c. 23).
- † " " " 1830 (11 Geo. 4 & 1 Will. 4, c. 54).
- \* Five Mile Act (35 Eliz. c. 2).
- † Flax and Hemp Seed (Ireland) Act, 1810 (50 Geo. 3, c. 82).
- \* Fleet Marriages Act (26 Geo. 2, c. 33).
- Forbes Mackenzie Act (16 & 17 Vict. c. 57).
- Forcible Entries, Statutes of (5 Rich. 2, c. 7; 15 Rich. 2, c. 2).
- § Foreign Jurisdiction Act, 1890 (53 & 54 Vict. c. 37).
- † " Law Ascertainment Act, 1861 (24 & 25 Vict. c. 11).
- § " Marriage Act, 1892 (55 & 56 Vict. c. 23).
- † " Protestants Naturalisation Act, 1708 (7 Anne, c. 5).
- † " Tribunals Evidence Act, 1856 (19 & 20 Vict. c. 113).
- Foresta, Charta de* (25 Edw. 1).
- " *Ordinatio de* (34 Edw. 1).
- † Forfeiture Act, 1870 (33 & 34 Vict. c. 23).
- † Forgery Act, 1830 (11 Geo. 4 & 1 Will. 4, c. 66).
- † " " 1837 (7 Will. 4 & 1 Vict. c. 84).
- † " " 1861 (24 & 25 Vict. c. 98).
- † " of Foreign Bills Act, 1803 (43 Geo. 3, c. 139).
- Forrest Fulton's Act (50 & 51 Vict. c. 21).
- Fox's Act (32 Geo. 3, c. 60), Libel.

\* Repealed.

† Given by the Short Titles Act, 1896.

¶ Collective title given by or under the Short Titles Act, 1896.

§ Given by the Act.

- † Frauds by Workmen Act, 1748 (22 Geo. 2, c. 27).  
 † „ „ „ 1777 (17 Geo. 3, c. 56).  
 † „ Statute of (1677, 29 Chas. 2, c. 3); 1 Rev. Stat. (2nd ed.), 663.  
 \* Fraudulent Bailee Act (20 & 21 Vict. c. 54).  
 † „ Bankrupts (Scotland) Act, 1827 (7 & 8 Geo. 4, c. 20).  
 „ Devises, Statute of (11 Geo. 4 & 1 Will. 4, c. 47).  
 † Freeman (Admission) Act, 1763 (3 Geo. 3, c. 15).  
 † Freight for Treasure Act, 1819 (59 Geo. 3, c. 25).  
 ¶ Freshwater Fisheries Acts, 1878 to 1886. See 49 & 50 Vict. c. 2.  
 Friendly Societies Act—  
 † 1850 (13 & 14 Vict. c. 115). \* 1854 (17 & 18 Vict. c. 56).  
 \* 1852 (15 & 16 Vict. c. 65). § 1896 (59 & 60 Vict. c. 25).  
 † Frivolous Arrests Act, 1725 (12 Geo. 1, c. 29).  
 § Fugitive Offenders Act, 1881 (44 & 45 Vict. c. 69).

- Gagging Acts, The (60 Geo. 3 & 1 Geo. 4, cc. 1, 2,\* 4<sup>r</sup>, 6,\* 8, 9\*.)  
 † Galashiels Act, 1867 (30 & 31 Vict. c. 85).  
 Gambling Act (14 Geo. 3, c. 48).  
 † Game Act, 1831 (1 & 2 Will. 4, c. 32).  
 † „ Certificates (Ireland) Act, 1842 (5 & 6 Vict. c. 81).  
 † „ Licences Act, 1860 (23 & 24 Vict. c. 90).  
 † „ (Scotland) Act, 1772 (3 Geo. 3, c. 54).  
 † „ „ 1832 (2 & 3 Will. 4, c. 38).  
 † „ Trespass Act, 1864 (27 & 28 Vict. c. 67).  
 † Gaming Act—  
 1710 (9 Anne, c. 19). 1802 (42 Geo. 3, c. 119).  
 1738 (12 Geo. 2, c. 28). 1835 (5 & 6 Will. 4, c. 41).  
 1739 (13 Geo. 2, c. 19). 1845 (8 & 9 Vict. c. 109).  
 1744 (18 Geo. 2, c. 34). § 1892 (55 & 56 Vict. c. 9).  
 † Gaming Houses Act, 1854 (17 & 18 Vict. c. 38).  
 † Gaol Fees Abolition Act, 1815 (55 Geo. 3, c. 50).  
 † „ „ „ 1845 (8 & 9 Vict. c. 114).  
 † „ „ „ (Ireland) Act, 1821 (1 & 2 Geo. 4, c. 77).  
 † „ Sessions Act, 1824 (5 Geo. 4, c. 12).  
 † Garroters Act, 1863 (26 & 27 Vict. c. 44).  
 Gavelet, Statute of (10 Edw. 2).  
 § General Prisons (Ireland) Act, 1877 (40 & 41 Vict. c. 49).  
 † „ Register Office Act, 1852 (15 & 16 Vict. c. 25).  
 † Geological Survey Act, 1845 (8 & 9 Vict. c. 63).  
 Gifts for Churches Act, 1803 (43 Geo. 3, c. 108).  
 † „ „ „ 1811 (51 Geo. 3, c. 115).  
 Gilbert Acts (17 Geo. 3, c. 53; 21 Geo. 3, c. 66 (Clergy); 22 Geo. 3, c. 83 (Poor)).  
 † Glebe Exchange Act—  
 1815 (55 Geo. 3, c. 147). 1820 (1 Geo. 4, c. 6).  
 1816 (56 Geo. 3, c. 52). 1825 (6 Geo. 4, c. 8).  
 \* Gloucester, Statute of (6 Edw. 1).

\* Repealed.

† Given by the Short Titles Act, 1896.

¶ Collective title given by or under the Short Titles Act, 1896. ^

§ Given by the Act.



- † Gold and Silver Thread Act, 1741 (15 Geo. 2, c. 20).  
 † " " " " 1788 (28 Geo. 3, c. 7).  
 † " " Wares Act, 1844 (7 & 8 Vict. c. 22).  
 † " " " " 1854 (17 & 18 Vict. c. 96).  
 † " Plate (Standard) Act, 1798 (38 Geo. 3, c. 60).  
 Gordon's (Lord) Act (31 & 32 Vict. c. 100, S.).  
 ¶ Government Annuities Acts, 1829 to 1888.  
 † " Offices Security Act, 1810 (50 Geo. 3, c. 85).  
 † " " " " 1836 (6 & 7 Will. 4, c. 28).  
 † " " " " 1838 (1 & 2 Vict. c. 61).  
 † " of India Act—  
 1800 (39 & 40 Geo. 3, c. 79). 1859 (22 & 23 Vict. c. 41).  
 1833 (3 & 4 Will. 4, c. 85). 1865 (28 & 29 Vict. c. 17).  
 1853 (16 & 17 Vict. c. 95). 1869 (32 & 33 Vict. c. 97).  
 1854 (17 & 18 Vict. c. 77). 1870 (33 & 34 Vict. c. 3).  
 1858 (21 & 22 Vict. c. 106). See Ilbert, Government of India.  
 † Grammar School Act, 1840 (3 & 4 Vict. c. 77).  
 † Grand Jurors Act, 1856 (19 & 20 Vict. c. 54).  
 ¶ " " (Ireland) Acts, 1816 to 1895.  
 † " Jury Cess (Dublin) Act, 1838 (1 & 2 Vict. c. 51).  
 † " " " Act, 1846 (9 & 10 Vict. c. 60).  
 † " " " 1848 (11 & 12 Vict. c. 26).  
 † " " " (Ireland) Act, 1857 (20 & 21 Vict. c. 7).  
 § Great Seal Act, 1880 (43 & 44 Vict. c. 10).  
 Greaves' Acts. The Criminal Law Consolidation Acts of 1861 (24 & 25 Vict. cc. 94—100).  
 † Greek Loan Act, 1864 (27 & 28 Vict. c. 40).  
 § " " 1898 (61 & 62 Vict. c. 4).  
 § " Marriages Act, 1884 (47 & 48 Vict. c. 20).  
 ¶ Greenwich Hospital Acts, 1865 to 1898 (61 & 62 Vict. c. 24).  
 † Guardians (Ireland) Act, 1849 (12 & 13 Vict. c. 4).  
 Gurney's (Russell) Acts (30 & 31 Vict. c. 35 ; 31 & 32 Vict. c. 116).  
 † Habeas Corpus Act—  
 1679 (31 Chas. 2, c. 2, 1 Rev. 1804 (44 Geo. 3, c. 102).  
 Statt. 2nd ed. 672). 1816 (56 Geo. 3, c. 100).  
 1803 (43 Geo. 3, c. 140). 1862 (25 & 26 Vict. c. 20).  
 § Hallmarking of Foreign Plate Act, 1904 (4 Edw. 7, c. 6).  
 Hall's (Sir Benjamin) Act (18 & 19 Vict. c. 120).  
 † Harbours Act, 1745 (19 Geo. 2, c. 22).  
 † " 1814 (54 Geo. 3, c. 159).  
 " Transfer Act, 1865 (28 & 29 Vict. c. 100).  
 † Hard Labour Act, 1822 (3 Geo. 4, c. 114).  
 † " (Ireland) Act, 1826 (7 Geo. 4, c. 9).  
 \* Hardwicke's (Lord) Act (26 Geo. 2, c. 33). See *Re M'Loughlin's Estate* (1878), 1 L. R. Ir. 421.  
 † Hares Act, 1848 (11 & 12 Vict. c. 29).  
 † " (Scotland) Act, 1848 (11 & 12 Vict. c. 30).

\* Repealed.

† Given by the Short Titles Act, 1896.

¶ Collective title given by or under the Short Titles Act, 1896.

§ Given by the Act.

- Harter Act (U.S.). See *The Rodney*, (1900) P. 112; *Dobell v. Steamship Rossmore Co.*, (1895) 2 Q.B. 408.
- Hawkesbury Acts. See *Campbell v. Stein* (1818), 3 Eng. Rep. 1418.
- † Hay and Straw Act, 1796 (36 Geo. 3, c. 88).
- † „ „ „ 1834 (4 & 5 Will. 4, c. 21).
- † „ „ „ 1856 (19 & 20 Vict. c. 114).
- † Heir Apparents' Establishments Act, 1795 (35 Geo. 3, c. 125).
- † Heritable Jurisdictions (Scotland) Act, 1746 (20 Geo. 2, c. 43).
- † „ „ Securities (Scotland) Act, 1860 (23 & 24 Vict. c. 80).
- ¶ Herring Fisheries (Scotland) Acts, 1771 (a) to 1890.
- † „ Fishery Act, 1851 (14 & 15 Vict. c. 26).
- † *Hibernia, Ordinatio de statu* (31 Edw. 3, stat. 4).
- † „ *Statutum de coheredibus* (20 Hen. 3).
- † Highlands (Services) Act, 1715 (1 Geo. 1, stat. 2, c. 54).
- ¶ Highway Acts, 1835 to 1885.
- † „ (Railway Crossings) Act, 1839 (2 & 3 Vict. c. 45).
- † „ (Scotland) Act, 1718 (5 Geo. 1, c. 30).
- „ „ „ 1771 (11 Geo. 3, c. 53).
- Hinde Palmer's Act (32 & 33 Vict. c. 46). *Vide ante*, p. 189 n.
- Hobhouse's Act (1 & 2 Will. 4, c. 60).
- Hogarth Act (8 Geo. 2, c. 13).
- Home Drummond Act (9 Geo. 4, c. 58).
- † Hop Trade Act, 1800 (39 & 40 Geo. 3, c. 81).
- † „ „ 1814 (54 Geo. 3, c. 123).
- Horne Tooke's Act (41 Geo. 3, c. 63).
- † Hosiery Act, 1843 (6 & 7 Vict. c. 40).
- † „ „ 1845 (8 & 9 Vict. c. 77).
- † Hospitals (Ireland) Act, 1818 (58 Geo. 3, c. 47).
- ¶ House of Commons (Disqualifications) Acts, 1715 to 1821—
- † 1715 (1 Geo. 1, stat. 2, c. 56). † 1812 (52 Geo. 3, c. 144).
- † 1741 (15 Geo. 2, c. 22). † 1813 (54 Geo. 3, c. 16).
- † 1782 (22 Geo. 3, c. 45). † 1821 (1 & 2 Geo. 4, c. 44).
- † 1801 (41 Geo. 3, cc. 52, 53).
- † House of Commons (Offices) Act—
- 1812 (52 Geo. 3, c. 11). 1849 (12 & 13 Vict. c. 72).
- 1846 (9 & 10 Vict. c. 77). 1856 (19 & 20 Vict. c. 1).
- † House of Commons (Officers) Act, 1834 (4 & 5 Will. 4, c. 70).
- † „ „ (Speaker) Act, 1832 (2 & 3 Will. 4, c. 105).
- † „ „ (Vacation of Seats) Act, 1864 (27 & 28 Vict. c. 34).
- † House Tax Act—
- 1803 (43 Geo. 3, c. 161). 1832 (2 & 3 Will. 4, c. 113).
- 1808 (48 Geo. 3, c. 55). 1834 (4 & 5 Will. 4, c. 19).
- 1817 (57 Geo. 3, c. 25). 1851 (14 & 15 Vict. c. 36).
- 1825 (6 Geo. 4, c. 7). 1871 (34 & 35 Vict. c. 103).
- Housing of the Working Classes Acts, 1890 to 1903 (3 Edw. 7, c. 39, s. 17).

(a) Misprinted 1821 in 59 & 60 Vict. c. 14, Sch. ii.

\* Repealed.

† Given by the Short Titles Act, 1896.

¶ Collective title given by or under the Short Titles Act, 1896.

§ Given by the Act.

† Illicit Distillation (Ireland) Act, 1831 (1 & 2 Will. 4, c. 55).  
 " " " " 1857 (20 & 21 Vict. c. 40).  
 † " " (Scotland) Act, 1822 (3 Geo. 4, c. 52).  
 † Illusory Appointments Act, 1830 (11 Geo. 4 & 1 Will. 4, c. 46).  
 † Imprisonment for Debt Act, 1827 (7 & 8 Geo. 4, c. 71).  
 † " (Scotland) Act, 1856 (19 & 20 Vict. c. 46).  
 † Improvement of Land Act, 1864 (27 & 28 Vict. c. 114).  
 † Incitement to Mutiny Act, 1797 (37 Geo. 3, c. 70). See 2 Steph.  
 Hist. Cr. Law, p. 293.  
 † Inclosure Act—  
 1756 (29 Geo. 2, c. 36). 1833 (3 & 4 Will. 4, c. 87).  
 1757 (31 Geo. 2, c. 41). 1836 (6 & 7 Will. 4, c. 115).  
 1773 (13 Geo. 3, c. 81). 1840 (3 & 4 Vict. c. 31).  
 1821 (1 & 2 Geo. 4, c. 43).  
 ¶ Inclosure Acts, 1845 to 1882.  
 † " (Consolidation) Act, 1801 (41 Geo. 3, c. 109).  
 † " and Drainage Rates Act, 1833 (3 & 4 Will. 4, c. 35).  
 † Income Tax Acts—  
 1842 (5 & 6 Vict. c. 35). 1859 (22 & 23 Vict. c. 18).  
 1851 (14 & 15 Vict. c. 12). 1860 (23 & 24 Vict. c. 14).  
 \* 1854 (17 & 18 Vict. c. 24).  
 † Income Tax (Foreign Dividends) Act, 1842 (5 & 6 Vict. c. 80, s. 2).  
 † " " (Insurance) Act, 1853 (16 & 17 Vict. c. 91).  
 " " " " 1855 (18 & 19 Vict. c. 35).  
 † Incumbents Act, 1868 (31 & 32 Vict. c. 117).  
 † India Bishops Act, 1842 (5 & 6 Vict. c. 119).  
 † " Military Funds Act, 1866 (29 & 30 Vict. c. 18).  
 † " (North-West Provinces) Act, 1835 (5 & 6 Will. 4, c. 52).  
 † " Officers' Salaries Act, 1837 (7 Will. 4 & 1 Vict. c. 47).  
 † " Salaries and Pensions Act (6 Geo. 4, c. 85).  
 † " Stock Dividends Act, 1871 (34 & 35 Vict. c. 29).  
 † Indian Bishops and Courts Act, 1823 (4 Geo. 4, c. 71).  
 " Act, 1871 (34 & 35 Vict. c. 62).  
 " Civil Service Act, 1861 (24 & 25 Vict. c. 54).  
 " Councils Act, 1869 (32 & 33 Vict. c. 98).  
 " " " 1871 (34 & 35 Vict. c. 34).  
 " " " 1874 (37 & 38 Vict. c. 91).  
 " High Courts Act, 1861 (24 & 25 Vict. c. 104).  
 " " 1865 (28 & 29 Vict. c. 15).  
 " Insolvency Act, 1848 (11 & 12 Vict. c. 21).  
 \* " Presidency Towns Act, 1815 (55 Geo. 3, c. 84).  
 † " Prize Money Act, 1866 (29 & 30 Vict. c. 47).  
 " " 1868 (31 & 32 Vict. c. 37).  
 † " Railway Companies Act, 1868 (31 & 32 Vict. c. 26).

§ Given by the Act.

- † Indian Railway Companies Act, 1873 (36 & 37 Vict. c. 43).
- † „ Salaries and Pensions Act, 1825 (6 Geo. 4, c. 85).
- † „ Securities Act, 1860 (23 & 24 Vict. c. 5<sup>f</sup>).
- † Indictable Offences Act, 1848 (11 & 12 Vict. c. 42).
- † „ „ (Ireland) Act, 1849 (12 & 13 Vict. c. 69).
- Inebriates Acts, 1879 to 1900. See 63 & 64 Vict. c. 28.
- † Infant Executors (Ireland) Act, 1818 (58 Geo. 3, c. 81).
- † „ Felons Act, 1840 (3 & 4 Vict. c. 90).
- † „ Marriage Act, 1860 (23 & 24 Vict. c. 83).
- † „ Property Act, 1830 (11 Geo. 4 & 1 Will. 4, c. 65).
- † „ „ (Ireland) Act, 1835 (5 & 6 Will. 4, c. 17).
- † „ Settlements Act, 1855 (18 & 19 Vict. c. 43).
- † Infettment Act, 1845 (8 & 9 Vict. c. 35).
- † Inferior Courts Act, 1779 (19 Geo. 3, c. 70).
- † „ „ „ 1844 (7 & 8 Vict. c. 19).
- † „ „ Officers (Ireland) Act, 1858 (21 & 22 Vict. c. 52).
- † Inheritance Act, 1833 (3 & 4 Will. 4, c. 106).
- † Inland Revenue Act, 1855 (18 & 19 Vict. c. 78).
- † „ „ „ 1868 (31 & 32 Vict. c. 124).
- † „ „ „ Board Act, 1849 (12 & 13 Vict. c. 1).
- † Innkeepers' Liability Act, 1863 (26 & 27 Vict. c. 41).
- † Insolvency Courts Act, 1835 (5 & 6 Will. 4, c. 42).
- ¶ International Copyright Acts.
- § Interpretation Act, 1889 (52 & 53 Vict. c. 63), *post*, Appendix C.
- † Intestate Moveable Succession (Scotland) Act, 1855 (18 & 19 Vict. c. 23).
- † Intestates Act, 1873 (36 & 37 Vict. c. 52).
- † „ „ „ 1875 (38 & 39 Vict. c. 27).
- § „ „ „ Estates Act, 1884 (47 & 48 Vict. c. 71).
- † Intoxicating Liquors (Ireland) Act, 1815 (55 Geo. 3, c. 19).
- † Irish Appeals Act, 1783 (23 Geo. 3, c. 28).
- † Irish Charges Act, 1801 (41 Geo. 3, c. 32).
- † „ Constabulary Act, 1847 (10 & 11 Vict. c. 100).
- ¶ “Irish Valuation Acts.” And see 52 & 53 Vict. c. 63, s. 24, *post*, Appendix C.
- † Isle of Man Purchase Act, 1765 (5 Geo. 3, c. 26).
- Isolation Hospitals Acts, 1893 and 1901. See 1 Edw. 7, c. 8.
- † Jamaica Act, 1866 (29 & 30 Vict. c. 12).
- † „ „ „ Loan Act, 1862 (25 & 26 Vict. c. 55).
- \* Jeofails, Statutes of (22 Edw. 4, c. 50; 32 Hen. 8, c. 30; 37 Hen. 8, c. 6). See 3 Reeves, Hist. Eng. Law, p. 309.
- Jervis' Acts (11 & 12 Vict. cc. 42, 43, 44; and 18 & 19 Vict. c. 57).
- Jewry, Statutes of (*de Judaismo*). *Vide ante*, p. 48.
- † Jews' Relief Act, 1858 (21 & 22 Vict. c. 49).

\* Repealed.

† Given by the Short Titles Act, 1896.

¶ Collective title given by or under the Short Titles Act, 1896.

§ Given by the Act.

- † Joint Stock Banks' Act, 1838 (1 & 2 Vict. c. 96).
- † " " " " 1856 (19 & 20 Vict. c. 100).
- † " " " (Scotland) Act, 1896 (19 & 20 Vict. c. 3).
- † " " Companies Act, 1840 (3 & 4 Vict. c. 111).
- † " Tenancy (Ireland) Act, 1823 (4 Geo. 4, c. 36).
- \* Jointures, Statute of (11 Hen. 7, c. 20).
- † Judgment of Death Act, 1823 (4 Geo. 4, c. 48).
- † " Mortgage (Ireland) Act, 1850 (13 & 14 Vict. c. 29).
- † " " " " 1858 (21 & 22 Vict. c. 105).
- † Judgments Act—
  - 1838 (1 & 2 Vict. c. 110).      1855 (18 & 19 Vict. c. 15).
  - 1839 (2 & 3 Vict. c. 11).      1864 (27 & 28 Vict. c. 112).
  - 1840 (3 & 4 Vict. c. 82).
- † Judgments (Ireland) Act, 1844 (7 & 8 Vict. c. 90).
- † " " " 1849 (12 & 13 Vict. c. 95).
- † " Registry (Ireland) Act, 1850 (13 & 14 Vict. c. 74).
- † " " " " 1871 (34 & 35 Vict. c. 72).
- † Judges' Lodgings (Ireland) Act, 1801 (41 Geo. 3, c. 88).
- † " " Act, 1839 (2 & 3 Vict. c. 69).
- † " Pensions Act, 1799 (39 Geo. 3, c. 110).
- † " " 1813 (53 Geo. 3, c. 153).
- † " " 1825 (6 Geo. 4, c. 84).
- † " " (Ireland) Act, 1814 (54 Geo. 3, c. 95).
- † " " (Scotland) Act, 1808 (48 Geo. 3, c. 145).
- ¶ Judicature Acts, 1873 to 1899. See 62 & 63 Vict. c. 6, s. 2.
- † " (Ireland) Act, 1831 (1 & 2 Will. 4, c. 31).
- ¶ " " Acts, 1877 to 1897 (60 & 61 Vict. c. 66).
- † Judicial Committee Act, 1833 (3 & 4 Will. 4, c. 41).
- † " " 1843 (6 & 7 Vict. c. 38).
- † " " 1844 (7 & 8 Vict. c. 69).
- † " Factors Act, 1849 (12 & 13 Vict. c. 51).
- † " Ratifications (Scotland) Act, 1836 (6 & 7 Will. 4, c. 43).
- ¶ Juries Acts, 1825 to 1870.
- † " " 1825 (6 Geo. 4, c. 50), formerly called County Juries Act, 1825.
- § " " 1862 (25 & 26 Vict. c. 107).
- § " " 1870 (33 & 34 Vict. c. 77).
- † " Detention Act, 1897 (60 & 61 Vict. c. 18).
- † " (Ireland) Act, 1872 (35 & 36 Vict. c. 25).
- ¶ " " Acts, 1871 to 1894.
- † " (Lighthouse Keepers' Exemption) Act, 1869 (32 & 33 Vict. c. 36).
- † " (Scotland) Act, 1826 (7 Geo. 4, c. 8).
- ¶ " " Acts, 1745 to 1869.
- † Jurisdiction in Rating Act, 1877 (40 & 41 Vict. c. 11).
- † Jurors (Scotland) Act, 1745 (19 Geo. 2, c. 9).
- † " " 1825 (6 Geo. 4, c. 22).

\* Repealed.

† Given by the Short Titles Act, 1896.

¶ Collective title given by or under the Short Titles Act, 1896.

§ Given by the Act.

- † Jury Trials (Scotland) Act, 1815 (55 Geo. 3, c. 42).
- †     "     "     "     "     1819 (59 Geo. 3, c. 35).
- †     "     "     "     "     1837 (7 Will. 4 & 1 Vict. c. 14)
- † Justice Clerks' Fees Act, 1753 (26 Geo. 2, c. 14).
- †     "     "     "     (Middlesex) Act, 1754 (27 Geo. 2, c. 16).
- † Justices Act, 1753 (26 Geo. 2, c. 27).
- †     "     Commitment Act, 1741 (15 Geo. 2, c. 24).
- †     "     "     "     "     1743 (17 Geo. 2, c. 5).
- †     "     (Ireland) Act, 1826 (7 Geo. 4, c. 61).
- †     "     "     "     "     1842 (5 & 6 Vict. c. 46).
- †     "     "     "     "     1843 (6 & 7 Vict. c. 8).
- †     "     Jurisdiction Act, 1742 (16 Geo. 2, c. 18).
- †     "     "     "     "     1852 (15 & 16 Vict. c. 38).
- †     "     Oaths Act, 1766 (7 Geo. 3, c. 9).
- †     "     of the Peace Small Debt (Scotland) Act, 1825 (6 Geo. 4, c. 48).
- †     "     "     "     "     "     1849 (12 & 13 Vict. c. 34).
- †     "     Protection Act, 1803 (43 Geo. 3, c. 141).
- †     "     "     "     "     1848 (11 & 12 Vict. c. 44).
- †     "     "     (Ireland) Act, 1849 (12 & 13 Vict. c. 16).
- †     "     Qualification Act, 1871 (34 & 35 Vict. c. 18).
- †     "     "     "     "     1875 (38 & 39 Vict. c. 54).
- †     "     "     "     Acts, 1731 to 1875.
- †     "     "     "     (Scilly Islands) Act, 1834 (4 & 5 Will. 4, c. 43).
- †     "     Quorum Act, 1766 (7 Geo. 3, c. 21).
- †     "     (Scotland) Act, 1856 (19 & 20 Vict. c. 48).
- †     *Justiciariis assignatis, Statutum de (incert. temp.).* See 2 Reeves, Hist. Eng. Law, 197.
- † Justiciary and Circuit Courts (Scotland) Act, 1783 (23 Geo. 3, c. 45).
- †     "     Courts (Scotland) Act, 1814 (54 Geo. 3, c. 67).
- †     "     Court (Scotland) Act, 1868 (31 & 32 Vict. c. 95).
- †     "     Court (Scotland) Acts, 1873 to 1892.
- †     "     (Scotland) Act, 1848 (11 & 12 Vict. c. 79).

Keating's Act (18 & 19 Vict. c. 67).

\* Kenilworth, Statute of (51 & 52 Hen. 3).

Kidnapping Act, 1872. Short title of 35 & 36 Vict. c. 19, s. 1, repealed by 38 & 39 Vict. c. 51, s. 11, and new title, Pacific Islanders Protection Acts, substituted by sect. 1.

† Kilmainham Hospital Pensions Commutation Act, 1813 (53 Geo. 3, c. 154).

† King's County Assizes Acts, 1832 (2 & 3 Will. 4, c. 60).

Kingsdown's (Lord) Act (24 & 25 Vict. c. 114).

† Kinsale Act, 1819 (59 Geo. 3, c. 84).

† Knackers Act, 1786 (26 Geo. 3, c. 71).

†     "     "     1844 (7 & 8 Vict. c. 87).

\* Repealed.

† Given by the Short Titles Act, 1896.

† Collective title given by or under the Short Titles Act, 1896.

§ Given by the Act.

- \* Labourers, Statute of (23 Edw. 3). See Reeyes, *Hist. Com. Law*, vol. 2, p. 455; vol. 3, p. 587.
- † „ (Ireland) Act, 1860 (23 & 24 Vict. c. 19).
- ¶ „ „ Acts, 1883 to 1896. And see 59 & 60 Vict. c. 14, Sch. ii.
- † Lanark Prisons Act, 1868 (31 & 32 Vict. c. 50).
- † Lancaster County Clerk Act, 1871 (34 & 35 Vict. c. 73).
- ¶ „ „ Palatine Acts, 1794 to 1871.
- † Land Drainage Act, 1845 (8 & 9 Vict. c. 56).
- † „ „ „ 1847 (10 & 11 Vict. c. 38).
- † „ „ „ (Rating) Act, 1743 (17 Geo. 2, c. 37).
- † „ „ „ (Scotland) Act, 1847 (10 & 11 Vict. c. 113).
- ¶ „ Law (Ireland) Acts. But see 59 & 60 Vict. c. 47, ss. 48, 50.
- ¶ „ Purchase (Ireland) Acts. And see 59 & 60 Vict. c. 47, ss. 48, 50; 3 Edw. 7, c. 37, ss. 98, 100.
- † „ Registry Act, 1862 (25 & 26 Vict. c. 53).
- † Land Tax Acts—
  - † 1797 (38 Geo. 3, c. 5). † 1834 (4 & 5 Will. 4, c. 60).
  - † 1813 (53 Geo. 3, c. 142). † 1842 (5 & 6 Vict. c. 37).
  - † 1831 (1 & 2 Will. 4, c. 21).
- † Land Tax Certificates Forgery Act, 1812 (52 Geo. 3, c. 143).
- † „ Commissioners Act, 1798 (38 Geo. 3, c. 48).
- „ „ „ 1827 (7 & 8 Geo. 4, c. 75).
- „ „ „ 1828 (9 Geo. 4, c. 38).
- † „ Perpetuation Act, 1798 (38 Geo. 3, c. 60).
- † Land Tax Redemption Act—
  - 1802 (42 Geo. 3, c. 116). 1817 (57 Geo. 3, c. 100).
  - 1803 (43 Geo. 3, c. 51). 1837 (7 Will. 4 & 1 Vict. c. 17).
  - 1805 (45 Geo. 3, c. 77). \* 1838 (1 & 2 Vict. c. 58).
  - 1810 (50 Geo. 3, c. 58). 1853 (16 & 17 Vict. c. 74).
  - 1813 (53 Geo. 3, c. 123). 1853, No. 2 (16 & 17 Vict. c. 117).
  - 1814 (54 Geo. 3, c. 173).
- † Land Tax Redemption (Investment) Act, 1853 (16 & 17 Vict. c. 90).
- § „ Transfer Act, 1875 (38 & 39 Vict. c. 87).
- § „ „ „ 1897 (60 & 61 Vict. c. 65).
- † „ „ (Ireland) [Act, 1848] (11 & 12 Vict. c. 120).
- † Landed Estates Court (Ireland) Act, 1858 (21 & 22 Vict. c. 72).
- † „ „ „ „ „ 1861 (24 & 25 Vict. c. 123).
- ¶ „ „ Property Improvement (Ireland) Acts.
- † Landlord and Tenant Act, 1709 (8 Anne, c. 18).
- † „ „ „ „ 1730 (4 Geo. 2, c. 28).
- † „ „ „ „ 1851 (14 & 15 Vict. c. 25).
- † „ „ „ (Ireland) Act, 1871 (34 & 35 Vict. c. 92).
- † Lands Clauses Acts, in all statutes passed after 1889 :—
  - (1) As to England and Wales, 8 & 9 Vict. c. 18; 23 & 24 Vict. c. 106; 32 & 33 Vict. c. 18; 46 & 47 Vict. c. 15; and any Act for the time being in force amending them.

\* Repealed.

† Given by the Short Titles Act, 1896.

¶ Collective title given by or under the Short Titles Act, 1896.

§ Given by the Act.

- (2) As to Scotland, 8 & 9 Vict. c. 19; 23 & 24 Vict. c. 106; and any Act for the time being in force amending them.
- (3) As to Ireland, 8 & 9 Vict. c. 18; 23 & 24 Vict. c. 97; 14 & 15 Vict. c. 70; 27 & 28 Vict. c. 71; 31 & 32 Vict. c. 70; and any Act for the time being in force amending them. Int. Act, 1889 (c. 63), s. 23, *post*, Appendix C.
- † Lands Valuation (Scotland) Act, 1854 (17 & 18 Vict. c. 91).
- † „ „ (Scotland) Act, 1857 (20 & 21 Vict. c. 58).
- † „ „ Langdale's (Lord) Act (7 Will. 4 & 1 Vict. c. 26: Wills).
- † Larceny Act, 1861 (24 & 25 Vict. c. 96).
- † „ „ 1868 (31 & 32 Vict. c. 116).
- § „ „ 1896 (59 & 60 Vict. c. 52).
- § „ „ 1901 (1 Edw. 7, c. 10).
- „ „ Acts, 1861 to 1901. See 1 Edw. 7, c. 10, s. 24.
- † Lascars Act, 1823 (4 Geo. 4, c. 80).
- † Law Agents (Scotland) Act, 1873 (36 & 37 Vict. c. 63).
- † „ „ Costs (Ireland) Act, 1823 (4 Geo. 4, c. 89).
- † „ „ of Distress and Small Debts (Ireland) Act, 1893 (56 & 57 Vict. c. 36).
- † „ „ of Property Amendment Act, 1859 (22 & 23 Vict. c. 35).
- † „ „ „ „ 1860 (23 & 24 Vict. c. 38).
- † „ „ Terms Act, 1830 (11 Geo. 4 & 1 Will. 3, c. 70).
- † „ „ Explanation Act, 1830 (1 Will. 4, c. 3).
- † Leases Act, 1845 (8 & 9 Vict. c. 124).
- † „ „ 1849 (12 & 13 Vict. c. 26).
- † „ „ 1850 (13 & 14 Vict. c. 17).
- † „ „ (Ireland) Act, 1846 (9 & 10 Vict. c. 112).
- † Leasing Making (Scotland) Act, 1825 (6 Geo. 4, c. 47).
- † Lecturers and Parish Clerks Act, 1844 (7 & 8 Vict. c. 59).
- † Lectures Copyright Act, 1835 (5 & 6 Will. 4, c. 65).
- † Leeman's Acts (30 & 31 Vict. c. 29; 34 & 35 Vict. c. 61). See *Perry v. Barnett* (1885), 14 Q. B. D. 467.
- † Legacy Duty Act, 1796 (36 Geo. 3, c. 52).
- † „ „ 1799 (39 Geo. 3, c. 73).
- † „ „ 1805 (45 Geo. 3, c. 28).
- † Levy of Fines Act, 1822 (3 Geo. 4, c. 46).
- † „ „ 1823 (4 Geo. 4, c. 37).
- † Libel Act, 1792 (32 Geo. 3, c. 60).
- † „ „ 1843 (6 & 7 Vict. c. 96).
- † „ „ 1845 (8 & 9 Vict. c. 75).
- † Liberated Africans Act, 1853 (16 & 17 Vict. c. 86).
- † Liberties Act, 1836 (6 & 7 Will. 4, c. 87).
- † „ „ 1850 (13 & 14 Vict. c. 105).
- † Liberty of Ely Act, 1837 (7 Will. 4 & 1 Vict. c. 53).
- † Liberty of Religious Worship Act, 1855 (18 & 19 Vict. c. 86).
- † Licensed Grocers (Ireland) Act, 1818 (58 Geo. 3, c. 57).
- ¶ Licensing Acts, 1828 to 1902. See 2 Edw. 7, c. 28, s. 34; 4 Edw. 7, c. 23, s. 10 (1).

\* Repealed.

† Given by the Short Titles Act, 1896.

¶ Collective title given by or under the Short Titles Act, 1896.

§ Given by the Act.



- ¶ Licensing (Ireland) Acts, 1833 to 1881.  
 ¶ „ (Scotland) Acts, 1828 to 1887.  
 † Life Annuities Act, 1808 (48 Geo. 3, c. 142),  
 † „ Assurance Act, 1774 (14 Geo. 3, c. 48). See Porter on Insurance (4th ed.), 43.  
 † „ Assurance Companies Acts, 1870 to 1872; 33 & 34 Vict. c. 61 (1870); 34 & 35 Vict. c. 58 (1871); 35 & 36 Vict. c. 41 (1872); and see 59 & 60 Vict. c. 8 (1896).  
 † „ Insurance (Ireland) Act, 1866 (29 & 30 Vict. c. 42).  
 † Lighting and Watching Act, 1833 (3 & 4 Will. 4, c. 90).  
 † „ of Towns (Ireland) Act, 1857 (20 Vict. c. 12).  
 † Limitation Act, 1623 (21 Jas. 1, c. 16); 1 Rev. Stat. (2nd ed.), 577.  
 „ „ 1833 (3 & 4 Will. 4, c. 27), Real Property.  
 „ „ 1874 (37 & 38 Vict. c. 57) „ „  
 † „ of Actions Act, 1843 (6 & 7 Vict. c. 54).  
 † Limitations of Actions and Costs Act, 1842 (5 & 6 Vict. c. 97).  
 „ „ Statute of (21 Jas. 1, c. 16).  
 † Linen and Hemp Manufactures Act, 1750 (24 Geo. 2, c. 31).  
 † „ - and Hempen Manufactures (Scotland) Act, 1726 (13 Geo. 1, c. 26).  
 † „ Manufactures (Ireland) Act, 1835 (5 & 6 Will. 4, c. 27).  
 † „ „ „ „ 1844 (7 & 8 Vict. c. 47).  
 † „ Trade Marks Act, 1743 (17 Geo. 2, c. 30).  
 † „ „ „ „ 1744 (18 Geo. 2, c. 24).  
 † Liqueur Act, 1848 (11 & 12 Vict. c. 121).  
 † *Lis pendens* Act, 1867 (30 & 31 Vict. c. 47).  
 † Loan Societies Act, 1840 (3 & 4 Vict. c. 110).  
 † Lobsters (Scotland) Act, 1735 (9 Geo. 2, c. 33).  
 Local Authorities Loans (Scotland) Acts, 1891 and 1893. See 56 & 57 Vict. c. 8).  
 § „ Government Act, 1888 (51 & 52 Vict. c. 41).  
 § „ „ „ 1894 (56 & 57 Vict. c. 73).  
 † „ „ (Ireland) Act, 1871 (34 & 35 Vict. c. 109).  
 § „ „ „ Acts, 1898 to 1901. See 2 Edw. 7, c. 38, s. 24; 1902 (2 Edw. 7, c. 38).  
 „ „ „ (Scotland) Acts. See 57 & 58 Vict. c. 58, s. 1.  
 † „ Militia (England) Act, 1812 (52 Geo. 3, c. 38).  
 † „ „ „ „ 1813 (53 Geo. 3, c. 28).  
 † „ „ Exemption Act, 1812 (52 Geo. 3, c. 116).  
 \* „ „ (Ireland) Act, 1813 (53 Geo. 3, c. 48).  
 \* „ „ (Scotland) Act, 1812 (52 Geo. 3, c. 68).  
 † „ Taxation Returns Act, 1860 (23 & 24 Vict. c. 51).  
 Locke King's Acts, 17 & 18 Vict. c. 113; 30 & 31 Vict. c. 69; 40 & 41 Vict. c. 34. See *Dowdall v. M'Cartan* (1880), 5 L. R. (Ir.) 642.  
 Locke's Act (23 & 24 Vict. c. 127).  
 † Lock-up Houses Act, 1848 (11 & 12 Vict. c. 101).  
 † Lodgers' Goods Protection Act, 1871 (34 & 35 Vict. c. 79).

\* Repealed.

† Given by the Short Titles Act, 1896.

¶ Collective title given by or under the Short Titles Act, 1896.

§ Given by the Act.

§ London Government Act, 1899 (62 & 63 Vict. c. 14).

† „ Hackney Carriages Act—

1831 (1 & 2 Will. 4, c. 22). 1850 (13 & 14 Vict. c. 7).

1833 (3 & 4 Will. 4, c. 48). 1853 (16 & 17 Vict. c. 33).

1843 (6 & 7 Vict. c. 86). 1853, No. 2 (16 & 17 Vict. c. 127).

§ Lord Chancellor's Augmentation Act (26 & 27 Vict. c. 120).

† Lord Chancellor's Pension Act, 1832 (2 & 3 Will. 4, c. 111).

† Lord Lieutenant's and Lord Chancellor's Salaries (Ireland) Act, 1832  
(2 & 3 Will. 4, c. 116).

Lords' (The) Act (32 Geo. 2, c. 28). See *Zouch v. Empey* (1821), 4  
B. & Ald. 522).

Lord's Day Acts. See Sunday Observance Act.

† Lords Justices Act, 1837 (7 Will. 4 & 1 Vict. c. 72).

† Lotteries Act—

1710 (9 Anne, c. 6). 1806 (46 Geo. 3, c. 148).

1721 (8 Geo. 1, c. 2). 1823 (4 Geo. 4, c. 60).

1722 (9 Geo. 1, c. 19). 1836 (6 & 7 Will. 4, c. 66).

1732 (6 Geo. 2, c. 35). 1845 (8 & 9 Vict. c. 74).

† Lotteries (Ireland) Act, 1780 (21 Geo. 3, c. 14).

Lubbock's (Sir John) Act (34 & 35 Vict. c. 17), Bank Holidays.

§ Lunacy Act, 1890 (53 & 54 Vict. c. 5).

¶ „ (Ireland) Acts, 1821 to 1901. See 1 Edw. 7, c. 17, s. 7.

¶ „ (Scotland) Acts, 1857 to 1900. See 63 & 64 Vict. c. 54.

† Lunatics Removal (India) Act, 1851 (14 & 15 Vict. c. 81).

† Lying-in Hospitals Act, 1773 (13 Geo. 3, c. 82).

† Lyndhurst's (Lord) Act (5 & 6 Will. 4, c. 54).

† Lyon King of Arms Act, 1867 (30 & 31 Vict. c. 17).

† Magistrates (Scotland) Act, 1870 (33 & 34 Vict. c. 37).

Magna Charta (1), (9 Hen. 3, c. 16).

„ „ (2), (1297 (25 Edw. 1); 1 Rev. Stat. (2nd ed.), 44.

† Malicious Damage Acts, 1812 (52 Geo. 3, c. 130); 1861 (24 & 25  
Vict. c. 97).

† „ „ (Scotland) Act, 1816 (56 Geo. 3, c. 125).

† „ „ Injuries (Ireland) Act, 1848 (11 & 12 Vict. c. 69).

† „ „ „ „ 1853 (16 & 17 Vict. c. 38).

Malins' Acts (18 & 19 Vict. c. 43; 20 & 21 Vict. c. 57).

† Malta Act, 1801 (41 Geo. 3, c. 103).

† Mandamus (Ireland) Act, 1826 (7 Geo. 4, c. 21).

† Manor Courts Abolition (Ireland) Act, 1859 (22 Vict. c. 14).

Manufactured Tobacco Act, 1863 (26 & 27 Vict. c. 7).

† Manufactures Improvement Fund (Scotland) Act, 1847 (10 & 11  
Vict. c. 91).

Maraschino Act (11 & 12 Vict. c. 121).

† Marine Insurance Act, 1745 (19 Geo. 2, c. 37). See *Gedge v. Royal  
Exchange Assurance Corporation*, (1900) 2 Q. B. 214.

\* Repealed.

† Given by the Short Titles Act, 1896.

¶ Collective title given by or under the Short Titles Act, 1896.

§ Given by the Act.

- † Marine Insurance Act, 1788 (23 Geo. 3, c. 56).  
 Markets and Fairs Weighing of Cattle Acts, 1887 and 1891. See  
 54 & 55 Vict. c. 70.  
 Marlbridge on Marlborough, or Marlberge, Statute of, 1267 (52  
 Hen. 3; 1 Rev. Statt. (2nd ed.), 5).
- † Marriage Act—  
 1823 (4 Geo. 4, c. 76). 1836 (6 & 7 Will. 4, c. 85).  
 1824 (5 Geo. 4, c. 32). 1840 (3 & 4 Vict. c. 72).  
 1835 (5 & 6 Will. 4, c. 54).
- ¶ Marriage Acts, 1811 to 1898. See 61 & 62 Vict. c. 58, s. 1 (1).  
 † Marriage and Registration Act, 1856 (19 & 20 Vict. c. 119).
- † „ (Ireland) Act, 1844 (7 & 8 Vict. c. 81).  
 † „ „ „ 1846 (9 & 10 Vict. c. 72).  
 † „ Law (Ireland) Amendment Act, 1863 (26 & 27 Vict. c. 27).  
 † „ „ „ „ Acts, 1863 and 1873. See 36 &  
 37 Vict. c. 16.
- † „ of Lunatics Act, 1811 (51 Geo. 3, c. 37).  
 † „ (Scotland) Act, 1834 (4 & 5 Will. 4, c. 28).  
 † „ „ „ 1856 (19 & 20 Vict. c. 96).  
 † „ (Society of Friends) Act, 1860 (23 & 24 Vict. c. 18).  
 † „ „ „ „ 1872 (35 & 36 Vict. c. 10).
- † Marriages Confirmation Act—  
 1804 (44 Geo. 3, c. 77). 1830 (11 Geo. 4 & 1 Will. 4,  
 1808 (48 Geo. 3, c. 127). c. 18).  
 1825 (6 Geo. 4, c. 92). 1860 (23 & 24 Vict. c. 24).  
 See App. vii. to Official Index to Statutes (ed. 1905).
- Married Women's Property Acts, 1882 and 1884. See 47 & 48 Vict.  
 c. 14).
- § „ „ „ Act, 1893 (56 & 57 Vict. c. 63).  
 † „ „ „ (Ireland) Act, 1865 (28 & 29 Vict. c. 43).  
 § „ „ „ (Scotland) Act, 1881 (44 & 45 Vict. c. 21).  
 † „ „ „ Reversionary Interests Act, 1857 (20 & 21 Vict.  
 c. 57).
- Marten's Act (42 & 43 Vict. c. 31), Burials.
- † Master and Workman Arbitration Act, 1824 (5 Geo. 4, c. 96).  
 † Master of the Rolls (Ireland) Act, 1801 (41 Geo. 3, c. 25).
- ¶ Matrimonial Causes Acts, 1857 to 1878.  
 † 1857 (20 & 21 Vict. c. 85). † 1864 (27 & 28 Vict. c. 44).  
 † 1858 (21 & 22 Vict. c. 108). † 1866 (29 & 30 Vict. c. 32).  
 † 1859 (22 & 23 Vict. c. 61).
- Matrimonial Causes and Marriage Law (Ireland) Amendment Acts,  
 1870 and 1871. See 34 & 35 Vict. c. 49.
- ¶ Medical Acts—  
 § 1858 (21 & 22 Vict. c. 90). 1860 (23 & 24 Vict. c. 66).  
 † 1859 (22 Vict. c. 21). 1876 (39 & 40 Vict. c. 41).
- † Medical Councils Act, 1862 (25 & 26 Vict. c. 91).  
 † Medicine Stamp Act, 1802 (42 Geo. 3, c. 56).  
 † „ „ „ 1803 (43 Geo. 3, c. 73).  
 † „ „ „ 1812 (52 Geo. 3, c. 150).

\* Repealed.

† Given by the Short Titles Act, 1896.

¶ Collective title given by or under the Short Titles Act, 1896.

§ Given by the Act.

- † Meeting of Parliament Act, 1797 (37 Geo. 3, c. 127).
- † " " " 1799 (39 & 40 Geo. 3, c. 14).
- † " " " 1852 (15 & 16 Vict. c. 23).
- † Members of Parliament (Bankruptcy) Act, 1812 (52 Geo. 3, c. 144).
- § Mercantile Law Amendment Act, 1856 (19 & 20 Vict. c. 97).
- \* *Mercatoribus, Statutum de* (11 Edw. 1).
- Merchandise Marks Acts, 1887 to 1894. See 57 & 58 Vict. c. 19.
- Merchant Shipping Acts, 1894 to 1898. See 61 & 62 Vict. c. 44, s. 9.
- \* Merchants, Statute of (13 Edw. 1, stat. 3).
- † Mersey Collisions Act, 1874 (37 & 38 Vict. c. 52).
- Merton, Provisions of, 1235 (20 Hen. 3), 1 Rev. Stat. (2nd ed.), 1.
- † Metal Button Act, 1796 (36 Geo. 3, c. 60).
- Metalliferous Mines Regulation Acts, 1872 and 1875. See 38 & 39 Vict. c. 39.
- ¶ Metropolis Gas Acts, 1860 and 1861 (23 & 24 Vict. c. 125; 24 & 25 Vict. c. 79).
- ¶ " Management Acts, 1885 to 1893.
- Metropolitan Board of Works Loans Acts, 1869 to 1871. See 34 & 35 Vict. c. 47.
- ¶ " Commons Acts, 1866 to 1878.
- ¶ " Police Acts, 1829 to 1899. See 62 & 63 Vict. c. 26.
- † " " Courts Act, 1839 (2 & 3 Vict. c. 71).
- † " " " 1840 (3 & 4 Vict. c. 84).
- § " " " 1897 (60 & 61 Vict. c. 42).
- ¶ " Poor Acts, 1867 and 1871 (30 & 31 Vict. c. 6; 34 & 35 Vict. c. 15).
- " Streets Acts, 1867 to 1903. See 3 Edw. 7, c. 17.
- Michael Angelo Taylor's Act (57 Geo. 3, c. xxix.).
- † Michaelmas Term Act, 1750 (24 Geo. 2, c. 48).
- † Middlesex (Grand Juries) Act, 1872 (35 & 36 Vict. c. 52).
- † " Registry Act, 1708 (7 Anne, c. 20); 1 Rev. Stat. (2nd ed.), 843.
- † " Sessions Act, 1844 (7 & 8 Vict. c. 71).
- \* " " " 1859 (22 & 23 Vict. c. 4).
- † Military Prisons Act, 1879 (42 & 43 Vict. c. 32).
- † " Savings Bank Act, 1859 (22 & 23 Vict. c. 20).
- † Militia Act—
  - † 1802 (42 Geo. 3, c. 90).
  - † 1803 (43 Geo. 3, c. 50).
  - † 1852 (15 & 16 Vict. c. 50).
  - † 1855 (18 & 19 Vict. c. 57).
- † Militia (Ballot) Act, 1860 (23 & 24 Vict. c. 120).
- † " (Ballot Suspension) Act, 1865 (28 & 29 Vict. c. 46).
- † " (City of London) Act, 1820 (1 Geo. 4, c. 100).
- † " (Exemption of Religious Teachers) Act, 1803 (43 Geo. 3, c. 10).
- † " (Ireland) Act, 1809 (49 Geo. 3, c. 120).
- † " (Lands and Buildings) Act, 1873 (36 & 37 Vict. c. 68).
- † " (Medical Examinations) Act, 1815 (55 Geo. 3, c. 65).
- † " (Returns) Act, 1812 (52 Geo. 3, c. 105).

\* Repealed.

† Given by the Short Titles Act, 1896.

¶ Collective title given by or under the Short Titles Act, 1896.

§ Given by the Act.

- † Militia (Scotland) Act, 1802 (42 Geo. 3, c. 91).  
 † " " " 1803 (43 Geo. 3, c. 89).  
 † " " " No. 2 Act, 1803 (43 Geo. 3, c. 100).  
 † " " " Act, 1813 (53 Geo. 3, c. 29).  
 † " (Stannaries) Act, 1802 (42 Geo. 3, c. 72).  
 † " (Storehouses) Act, 1860 (23 & 24 Vict. c. 94).  
 † " (Tower Hamlets) Act, 1796 (37 Geo. 3, c. 25).  
 † Mills Act, 1796 (36 Geo. 3, c. 85).  
 † Ministers' Widows Fund (Scotland) Act, 1779 (19 Geo. 3, c. 20).  
 † Mines (Ireland) Act, 1806 (46 Geo. 3, c. 71).  
 † Mining Leases (Ireland) Act, 1848 (11 & 12 Vict. c. 13).  
 † Misappropriation by Servants Act, 1863 (26 & 27 Vict. c. 103).  
     *Modus levandi Fines* (18 Edw. 1, stat. 4).  
     *Monetâ Falsâ, Statutum de* (27 Edw. 1).  
     " *Statutum de* (20 Edw. 1, stat. 4).  
     " " *Parvum* (20 Edw. 1, stat. 6).  
 Monopolies, Statute of, 1623 (21 Jas. 1, c. 3); 1 Rev. Statt. (2nd ed.), 566.  
 Montgomery Act (10 Geo. 3, c. 51, Entail, S.).  
 † Mortgage Act, 1733 (17 Geo. 2, c. 20).  
 \* Mortmain Act (9 Geo. 2, c. 36). See 51 & 52 Vict. c. 42.  
 \* " Statute of (20 Edw. 1).  
 † Mortuaries (Bangor, &c.) Abolition Act, 1713 (13 Anne, c. 6).  
 † " (Chester) Act, 1755 (28 Geo. 2, c. 6).  
 Motor Car Acts, 1895 and 1903. See 3 Edw. 7, c. 36, s. 20 (3).  
 † Municipal Corporations Act, 1852 (15 & 16 Vict. c. 5).  
 § " " " 1882 (45 & 46 Vict. c. 50).  
 § " " " 1883 (46 & 47 Vict. c. 18).  
 ¶ " " (Ireland) Acts, 1840 to 1888.  
 † " Office Act, 1710 (9 Anne, c. 25).  
 † Murder Act, 1751 (25 Geo. 2, c. 37).  
 † Murders Abroad Act, 1817 (57 Geo. 3, c. 53).  
 Mure's (Lord) Act (25 & 26 Vict. c. 35, Liquor Licences, S.).  
 § Music and Dancing Licences (Middlesex) Act, 1894 (57 & 58 Vict. c. 15).  
 † Mussel Fisheries (Scotland) Act, 1847 (10 & 11 Vict. c. 92).  
 Mutiny Acts (1 & 2 Will. & Mar. c. 5, &c.), superseded by the Army Act (44 & 45 Vict. c. 58), and the Army Annual Act of each year.  
 " "  
 † National Debt (No. 1) Act, 1749 (23 Geo. 2, c. 1).  
 † " (No. 2) Act, 1749 (23 Geo. 2, c. 22).  
 † " " Act, 1830 (11 Geo. 1 & 1 Will. 4, c. 26).  
 ¶ " " Acts, 1870 to 1893.  
 † " " Commissioners Act, 1818 (58 Geo. 3, c. 66).  
 † " " Commissioners Investments Act, 1860 (23 & 24 Vict. c. 137).

† Given by the Short Titles Act, 1896.

§ Given by the Act.

- † National Debt Reduction Act, 1724 (11 Geo. 1, c. 9).
- † " " " " 1786 (26 Geo. 3, c. 31).
- † " " " " 1823 (4 Geo. 4, c. 19).
- † " Gallery Act, 1856 (19 & 20 Vict. c. 29).
- † Naturalization Acts, 1870 and 1872. See 35 & 36 Vict. c. 39.
- † Nautical Almanac Act, 1828 (9 Geo. 4, c. 66).
- † Naval Apprentices (Ireland) Act, 1851 (14 & 15 Vict. c. 35).
- † " Deserters Act, 1847 (10 & 11 Vict. c. 62).
- † " Enlistments Acts, 1835 to 1884.
- † " Volunteers Act, 1853 (16 & 17 Vict. c. 73).
- † Navy and Marines (Wills) Acts, 1865 and 1897. See 60 & 61 Vict. c. 15.
- † New Brunswick Boundary Act, 1851 (14 & 15 Vict. c. 63).
- † " " " " 1857 (20 & 21 Vict. c. 34).
- † " Churches (Scotland) Act, 1834 (4 & 5 Will. 4, c. 41).
- † " Forest Act, 1697 (9 Will. 3, c. 33).
- † " " " " 1851 (14 & 15 Vict. c. 76).
- † " And see App. iii. to Official Index to Statutes (ed. 1905).
- † " Parishes Acts, 1843 to 1884.
- † " " (Scotland) Act, 1844 (7 & 8 Vict. c. 44).
- † " South Wales Constitution Act, 1855 (18 & 19 Vict. c. 54).
- † " " (Debts) Act, 1813 (54 Geo. 3, c. 15).
- † Newfoundland Act—
  - 1809 (49 Geo. 3, c. 27).
  - 1832 (2 & 3 Will. 4, c. 78).
  - 1824 (5 Geo. 4, c. 67).
  - 1842 (5 & 6 Vict. c. 120).
- † Newgate Gaol Delivery Act, 1785 (25 Geo. 3, c. 18).
- † New Parishes Acts (6 & 7 Vict. c. 37; 7 & 8 Vict. c. 94; 19 & 20 Vict. c. 104; 32 & 33 Vict. c. 94).
- † New Zealand Boundaries Act, 1863 (26 & 27 Vict. c. 23). See Stat. R. & O. Revised (ed. 1904), vol. 9, tit. New Zealand, p. 6.
- † " " Constitution Act, 1852 (15 & 16 Vict. c. 72).
- † " " " Amendment Act, 1857 (20 & 21 Vict. c. 53).
- † " " " Loan Guarantee Act, 1857 (20 & 21 Vict. c. 51).
- † Night Poaching Act, 1828 (9 Geo. 4, c. 69); 1844 (7 & 8 Vict. c. 29).
- \* Nisi Prius, Statutes of (27 Edw. 1, stat. 1, c. 4).
- † Nonconformist Relief Act, 1779 (19 Geo. 3, c. 44).
- † Nonconformists' Chapels Act, 1844 (7 & 8 Vict. c. 45).
- † Non-Parochial Registers Act, 1840 (3 & 4 Vict. c. 92).
- † North American Fisheries Act, 1819 (59 Geo. 3, c. 38).
- † Northampton, Statute of, 1328 (2 Edw. 3). 1 Rev. Stat. (2nd ed.), 87.
- † North's (Lord) Act (13 Geo. 3, c. 63) (India).
- † North-Western Territories of America Act, 1859 (22 & 23 Vict. c. 26).
- † *Nullum tempus* Acts (E) (9 Geo. 3, c. 16; 24 & 25 Vict. c. 62; 48 Geo. 3, c. 47 (I); 39 & 40 Vict. c. 37 (I)).
- † Oaths Act, 1775 (15 Geo. 3, c. 39).
- † " " 1838 (1 & 2 Vict. c. 105).
- § " " 1888 (51 & 52 Vict. c. 46).

\* Repealed.

§ Given by the Short Titles Act, 1896.

† Collective title given by or under the Short Titles Act, 1896.

§ Given by the Act.

- Oblivion, Acts of (12 Chas. 2, c. 1; 13 Chas. 2, stat. 1, c. 15).
- † Obscene Publications Act, 1857 (20 & 21 Vict. c. 83).
- † Offences against the Person Act, 1861 (24 & 25 Vict. c. 100).
- †     "     at Sea Act—  
        1536 (28 Hen. 8, c. 15).     1806 (46 Geo. 3, c. 54).  
        1799 (39 Geo. 3, c. 37).     1820 (1 Geo. 4, c. 90).
- † Offenders' Conveyance Act, 1754 (27 Geo. 2, c. 3).
- † Officers' Commissions Act, 1862 (25 & 26 Vict. c. 4).
- § Official Secrets Act, 1889 (51 & 52 Vict. c. 52).
- \* *Officio coronatoris, Statutum de* (4 Edw. 1). See 1 Pollock & Maitland, Hist. Eng. Law, pp. 519, 571; Coroners' Rolls, Selden Society, vol. 9, p. xxv.
- O'Hagan's (Lord) Act (39 & 40 Vict. c. 21).
- ¶ Open Spaces Acts, 1877 to 1890. See 53 & 54 Vict. c. 15; s. 1.
- † Ordination of Aliens Act, 1784 (24 Geo. 3, sess. 2, c. 35).
- † Ordinations for Colonies Act, 1819 (59 Geo. 3, c. 60).
- † Ordnance Board Transfer Act, 1855 (18 & 19 Vict. c. 117).
- †     "     Survey Act, 1841 (4 & 5 Vict. c. 30).
- Osborne Morgan's Act (43 & 44 Vict. c. 41), Burials.
- † Oxford University Act—  
        1854 (17 & 18 Vict. c. 81).     1857 (20 & 21 Vict. c. 25).  
        1855 (18 & 19 Vict. c. 36).     1860 (23 & 24 Vict. c. 91).
- † Oyster Beds (Ireland) Act, 1866 (29 & 30 Vict. c. 88).
- †     "     Fisheries (Scotland) Act, 1840 (3 & 4 Vict. c. 74).
- Pacific Islanders' Protection Acts, 1872 and 1875. See 38 & 39 Vict. c. 51, s. 1.
- Palmer Act (19 & 20 Vict. c. 16).
- † Parish Apprentices Act—  
        1778 (18 Geo. 3, c. 47).     1816 (56 Geo. 3, c. 139).  
        1792 (32 Geo. 3, c. 57).     1842 (5 & 6 Vict. c. 7).  
        1802 (42 Geo. 3, c. 46).
- † Parish Constables Act, 1842 (5 & 6 Vict. c. 109).
- †     "     "     "     1844 (7 & 8 Vict. c. 52).
- †     "     "     "     1850 (13 & 14 Vict. c. 20).
- †     "     Notices Act, 1837 (7 Will. 4 & 1 Vict. c. 45).
- †     "     Officers Act, 1793 (33 Geo. 3, c. 55).
- †     "     Property and Parish Debts Act, 1842 (5 & 6 Vict. c. 18).
- † Parkhurst Prison Act, 1838 (1 & 2 Vict. c. 82).
- † Parliamentary Boundaries Act, 1832 (2 & 3 Will. 4, c. 64).
- †     "     (Ireland) Act, 1832 (2 & 3 Will. 4, c. 89).
- \*     "     "     Burghs (Scotland) Act, 1833 (3 & 4 Will. 4, c. 77).
- ¶     "     Costs Acts, 1847 to 1879.
- †     "     Deposits Act, 1846 (9 & 10 Vict. c. 20).
- †     "     "     and Bonds Act, 1892 (55 & 56 Vict. c. 27).
- †     "     Elections Act—  
        1744 (18 Geo. 2, c. 18).     1813 (53 Geo. 3, c. 49).  
        1745 (19 Geo. 2, c. 28).     1835 (5 & 6 Will. 4, c. 36).  
        1780 (20 Geo. 3, c. 17).     1848 (11 & 12 Vict. c. 90).  
        1785 (25 Geo. 3, c. 84).     1853 (16 & 17 Vict. c. 68).  
        1793 (33 Geo. 3, c. 64).     § 1868 (31 & 32 Vict. c. 125).

\* Repealed.

† Given by the Short Titles Act, 1896.

¶ Collective title given by or under the Short Titles Act, 1896.

§ Given by the Act.

- † Parliamentary Elections Fraudulent Conveyances Act, 1739 (13 Geo. 2, c. 20).  
 † (Ireland) Act—  
 1820 (60 Geo. 3 & 1 Geo. 4, c. 11). 1823 (4 Geo. 4, c. 55). 1850 (13 & 14 Vict. c. 68).  
 1821 (1 & 2 Geo. 4, c. 58).  
 † Parliamentary Elections (Polling) Act, 1853 (16 & 17 Vict. c. 15).  
 † " " (Scotland) Act, 1733 (7 Geo. 2, c. 16).  
 † " " (Soldiers) Act, 1847 (10 & 11 Vict. c. 21).  
 § " " Oaths Act, 1866 (29 & 30 Vict. c. 19).  
 † " " Papers Act, 1840 (3 & 4 Vict. c. 9). See *Stockdale v. Hansard* (1837), 3 St. Tr. N.S. 723.  
 † " " Privilege Act, 1737 (11 Geo. 2, c. 24).  
 † " " 1770 (10 Geo. 3, c. 50).  
 † " " Witnesses Act, 1858 (21 & 22 Vict. c. 78).  
 † " " Writs Act, 1813 (53 Geo. 3, c. 89).  
 † Parochial Assessments Act, 1836 (6 & 7 Will. 4, c. 96).  
 † " Buildings (Scotland) Acts, 1862 (25 & 26 Vict. c. 58); 1866 (29 & 30 Vict. c. 75).  
 † " Libraries Act, 1708 (7 Anne, c. 14).  
 † " Offices Act, 1861 (24 & 25 Vict. c. 125).  
 † " Records Act (39 & 40 Vict. c. 58), s. 1.  
 † " Registers Act, 1812 (52 Geo. 3, c. 146).  
 † " Stipends (Scotland) Act, 1812 (52 Geo. 3, c. 131).  
 † Parsonages Act, 1838 (1 & 2 Vict. c. 23); 1865 (28 & 29 Vict. c. 69).  
 † " Amendment Act, 1838 (1 & 2 Vict. c. 29).  
 § Partnership Act, 1890 (53 & 54 Vict. c. 39).  
 † Partridges Act, 1799 (39 Geo. 3, c. 34).  
 † Passage of Grain Act, 1795 (36 Geo. 3, c. 9).  
 \* Passenger Acts (16 & 17 Vict. c. 84; 18 & 19 Vict. c. 119; 26 & 27 Vict. c. 51; 33 & 34 Vict. c. 95; 35 & 36 Vict. c. 73).  
 Superseded by the Merchant Shipping Act, 1894 (57 & 58 Vict. c. 60).  
 † " Vessel Licences Act, 1828 (9 Geo. 4, c. 47).  
 Patent Medicines Act (42 Geo. 3, c. 56). See *Pharmaceutical Society v. Piper*, (1893) 1 Q. B. 686; *Same v. Armonson*, (1894) 2 Q. B. 720.  
 ¶ Patents, Designs, and Trade-Marks Acts, 1883 to 1902. See 2 Edw. 7, c. 34, s. 5.  
 § Patriotic Funds Act, 1903 (3 Edw. 7, c. 20).  
 † Paymaster-General Act, 1817 (57 Geo. 3, c. 41); 1835 (5 & 6 Will. 4, c. 35); 1848 (11 & 12 Vict. c. 55).  
 Peace Preservation (Ireland) Acts, 1 & 2 Will. 4, c. 44; 5 & 6 Vict. c. 28; 44 & 45 Vict. c. 5; 50 & 51 Vict. c. 20.  
 Pedlars Acts, 1871 and 1881. See 44 & 45 Vict. c. 45.  
 Peel's Acts (6 & 7 Vict. c. 37), District Churches.  
 " " (7 Geo. 4, c. 64; 7 & 8 Geo. 4, c. 27—29), Criminal Law.  
 Penal Laws (Ireland) enumerated, 1 Lecky, Hist. Ireland, 214, n.  
 ¶ " Servitude Acts, 1853 to 1891—  
 † 1853 (16 & 17 Vict. c. 99). § 1864 (27 & 28 Vict. c. 47).  
 † 1857 (20 & 21 Vict. c. 3). § 1891 (54 & 55 Vict. c. 69).

\* Repealed.

† Given by the Short Titles Act, 1896.

¶ Collective title given by or under the Short Titles Act, 1896.

§ Given by the Act.



- † Pension Duties Acts—
  - 1720 (7 Geo. 1, c. 27). 1809 (49 Geo. 3, c. 32); No. 2
  - 1725 (12 Geo. 1, c. 2). (49 Geo. 3, c. 110).
  - 1757 (31 Geo. 2, c. 22). 1810 (50 Geo. 3, c. 56).
  - 1758 (32 Geo. 2, c. 33). 1812 (52 Geo. 3, c. 56).
- † Pensioners Civil Disabilities Relief Act, 1869 (32 & 33 Vict. c. 15).
- † Pensions Act, 1838 (1 & 2 Vict. c. 95).
- † „ „ 1839 (2 & 3 Vict. c. 51).
- † „ „ Commutation Acts, 1871 to 1882. See 45 & 46 Vict. c. 44.
- † Pentonville Prison Act, 1842 (5 & 6 Vict. c. 29).
- † Perjury Act, 1728 (2 Geo. 2, c. 25).
- † Perpetuation of Testimony Act, 1842 (5 & 6 Vict. c. 69).
- † Peto's (Sir Morton) Act (13 & 14 Vict. c. 28).
- ¶ Petroleum Acts, 1871 to 1881.
- † Petty Bag Act, 1849 (12 & 13 Vict. c. 109).
- † „ „ Sessional Divisions Act, 1836 (6 & 7 Will. 4, c. 12).
- † „ „ „ 1859 (22 & 23 Vict. c. 65).
- † „ „ Sessions Act, 1849 (12 & 13 Vict. c. 18).
- § „ „ (Ireland) Act, 1851 (14 & 15 Vict. c. 93).
- † „ „ „ 1867 (30 & 31 Vict. c. 19).
- † Pharmacy Act, 1852 (15 & 16 Vict. c. 56).
- † „ „ 1869 (32 & 33 Vict. c. 117).
- § „ „ Acts Amendment Act, 1868 (31 & 32 Vict. c. 121).
- † Pheasants (Ireland) Act, 1865 (28 & 29 Vict. c. 54).
- † Piers and Harbours (Ireland) Act, 1866 (29 & 30 Vict. c. 45).
- † „ „ and Quays (Ireland) Act, 1835 (5 & 6 Will. 4, c. 84).
- † Pillory Abolition Act, 1816 (56 Geo. 3, c. 138).
- † Piracy Act—
  - 1717 (4 Geo. 1, c. 11). 1837 (7 Will. 4 & 1 Vict. c. 88).
  - 1721 (8 Geo. 1, c. 24). 1850 (13 & 14 Vict. c. 26).
  - 1744 (18 Geo. 2, c. 30).
- Pitt Lewis' Act (54 & 55 Vict. c. 43), Forged Transfers.
- Pitt's Acts (20 Geo. 3, sess. 2, c. 25), India; (27 Geo. 3, c. 15),  
Excise.
- † Places of Religious Worship Act, 1812 (52 Geo. 3, c. 155).
- † „ „ Worship Registration Act, 1855 (18 & 19 Vict. c. 81).
- † Plate, Assay (Ireland) Act, 1807 (47 Geo. 3, sess. 2, c. 15).
- ¶ „ „ (Sheffield) Act, 1784 (24 Geo. 3, sess. 2, c. 20).
- † „ „ (Sheffield and Birmingham) Act, 1772 (13 Geo. 3, c. 52).
- † Plate Duty Act, 1719 (6 Geo. 1, c. 11).
- † „ „ (Offences) Act, 1738 (12 Geo. 2, c. 26).
- † „ „ „ 1772 (13 Geo. 3, c. 59).
- † „ „ (Scotland) Act, 1836 (6 & 7 Will. 4, c. 69).
- † Pleading Act, 1711 (10 Anne, c. 28).
- † „ „ in Misdemeanour Act, 1819 (60 Geo. 3 & 1 Geo. 4, c. 4).
- \* Plimsoll's Act (39 & 40 Vict. c. 80).
- † Pluralities Act, 1838 (1 & 2 Vict. c. 106).
- † „ „ 1850 (13 & 14 Vict. c. 98).

\* Repealed.

† Given by the Short Titles Act, 1896.

¶ Collective title given by or under the Short Titles Act, 1896.

§ Given by the Act.

† Poaching Prevention Act, 1862 (25 & 26 Vict. c. 114).

† Poisons (Ireland) Act, 1870 (33 & 34 Vict. c. 26).

¶ Police Acts, 1839 to 1893.

¶ „ (England) Acts. See 53 & 54 Vict. c. 45, s. 38 (2).

¶ „ (Scotland) Acts, 1857 to 1890.

Pollock's (Sir Frederick) Act (5 & 6 Vict. c. 47).

† Poor Law Amendment Act—

1834 (4 & 5 Will. 4, c. 76). 1849 (12 & 13 Vict. c. 103).

1842 (5 & 6 Vict. c. 57). 1850 (13 & 14 Vict. c. 101).

1844 (7 & 8 Vict. c. 101). 1851 (14 & 15 Vict. c. 105).

1848 (11 & 12 Vict. c. 110). 1866 (29 & 30 Vict. c. 113).

† Poor Law (Appeals) Act, 1820 (1 Geo. 4, c. 36).

† „ (Apprentices, &c.) Act, 1851 (14 & 15 Vict. c. 11).

† „ (Audit) Act, 1848 (11 & 12 Vict. c. 91).

† „ Board Act, 1847 (10 & 11 Vict. c. 109).

† „ (Burials) Act, 1855 (18 & 19 Vict. c. 79).

† „ Certified Schools Act, 1862 (25 & 26 Vict. c. 43).

† „ Inspectors (Ireland) Act, 1868 (31 & 32 Vict. c. 74).

† „ (Justices Jurisdiction) Act, 1849 (12 & 13 Vict. c. 64).

†\* „ Officers' Superannuation Act, 1864 (27 & 28 Vict. c. 42).

† „ (Overseers) Act, 1814 (54 Geo. 3, c. 91).

† „ „ 1849 (12 & 13 Vict. c. 8).

† „ (Payment of Debts) Act, 1859 (22 & 23 Vict. c. 49).

† „ (Procedure) Act, 1848 (11 & 12 Vict. c. 31).

† „ (Schools) Act, 1848 (11 & 12 Vict. c. 82).

† „ (Scotland) Act, 1845 (8 & 9 Vict. c. 83).

† „ „ 1856 (19 & 20 Vict. c. 117).

† „ „ (No. 1), 1861 (24 & 25 Vict. c. 18).

† „ „ (No. 2), 1861 (24 & 25 Vict. c. 37).

† Poor Prisoners (Scotland) Act, 1825 (6 Geo. 4, c. 62).

† Poor Rate Act—

1743 (17 Geo. 2, c. 3). 1810 (50 Geo. 3, c. 49).

1801 (41 Geo. 3, c. 23). 1839 (2 & 3 Vict. c. 84).

† Poor Rate (Exemption) Act, 1833 (3 & 4 Will. 4, c. 30).

† „ „ 1840 (3 & 4 Vict. c. 89), *temp.*

Justices' Jurisdiction Act (16 Geo. 2, c. 18).

† Poor Rates Recovery Act, 1862 (25 & 26 Vict. c. 82).

† Poor Relief Acts—

1601 (43 Eliz. c. 2). 1814 (54 Geo. 3, c. 170).

1662 (14 Chas. 2, c. 12). 1815 (55 Geo. 3, c. 137).

1691 (3 Will. & Mar. c. 11). 1819 (59 Geo. 3, c. 112).

1722 (9 Geo. 1, c. 71). (No. 2), 1819 (59 Geo. 3, c. 95).

1743 (17 Geo. 2, c. 38). 1831 (1 & 2 Will. 4, c. 42).

1769 (9 Geo. 3, c. 37). 1849 (12 & 13 Vict. c. 13).

1795 (36 Geo. 3, c. 10).

† Poor Relief (Deserted Wives and Children) Act, 1718 (5 Geo. 1, c. 8).

† „ (Ireland) Acts, 1838 to 1892.

† „ „ Act, 1838 (1 & 2 Vict. c. 56).

\* Repealed.

† Given by the Short Titles Act, 1896.

¶ Collective title given by or under the Short Titles Act, 1896.

§ Given by the Act.

- † Poor Relief (Loans) Act, 1836 (6 & 7 Will. 4, c. 107).
- †     "                 "                 "     1838 (1 & 2 Vict. c. 25).
- †     "                 (Settlement) Act, 1825 (6 Geo. 4, c. 57).
- †     "                 "                 "     1831 (1 Will. 4, c. 18).
- † Poor Removal Act—
  - 1795 (35 Geo. 3, c. 101).                 (No. 2), 1861 (24 & 25 Vict. c. 76).
  - 1845 (8 & 9 Vict. c. 117).                 c. 76).
  - 1846 (9 & 10 Vict. c. 66).                 1862 (25 & 26 Vict. c. 113).
  - 1847 (10 & 11 Vict. c. 33).                 1863 (26 & 27 Vict. c. 89).
  - 1848 (11 & 12 Vict. c. 111).                 1864 (27 & 28 Vict. c. 105).
  - 1861 (24 & 25 Vict. c. 55).
- † Poor (Settlement and Removal) Act, 1809 (49 Geo. 3, c. 124).
- † Portendic and Albreda Convention Act, 1858 (21 & 22 Vict. c. 35).
- † Portuguese Deserters Act, 1849 (12 & 13 Vict. c. 25).
- ¶ Post Office Acts, 1837 to 1895.
  - ¶     "                 Duties Acts, 1840 to 1891.
  - ¶     "                 (Management) Acts, 1837 to 1884.
  - ¶     "                 (Money Orders) Acts, 1848 to 1904. See 4 Edw. 7, c. 14, s. 3.
  - ¶     "                 (Offences) Acts, 1837 to 1884.
  - †     "                 (Revenues) Act, 1710 (9 Anne, c. 11).
  - ¶     "                 Savings Bank Acts, 1861 to 1904 (and see 4 Edw. 7, c. 8, s. 16).
- † Pound Breach Act, 1843 (6 & 7 Vict. c. 30).
- † Powers of Appointment Act, 1874 (37 & 38 Vict. c. 37).
- † Poynning's Law (10 Hen. 7, c. 4; 10 Hen. 7, c. 22). See Irish Statt. Rev. App., and note.
- † Præmunire, Statute of, 1392 (16 Rich. 2, c. 5); 1 Rev. Statt. (2nd ed.), 173.
- † *Prærogativâ Regis, Statutum de (incert. temp.)*; 1 Rev. Statt. (2nd ed.), 80.
- † Preliminary Inquiries Act (14 & 15 Vict. c. 49).
- † Prescription Act, 1832 (2 & 3 Will. 4, c. 71).
- †     "                 (Ireland) Act, 1858 (21 & 22 Vict. c. 42).
- † Presentation of Benefices Act, 1713 (13 Anne, c. 13).
- † Prevention of Offences Act, 1851 (14 & 15 Vict. c. 19).
- † Previous Conviction Act, 1836 (6 & 7 Will. 4, c. 111).
- † Princess Sophia's Precedence Act, 1711 (10 Anne, c. 8).
- † Prints and Engravings Copyright (Ireland) Act, 1836 (6 & 7 Will. 4, c. 59).
- †     "                 Copyright Act, 1777 (17 Geo. 3, c. 57).
- ¶ Prison Acts, 1865 to 1898. See 61 & 62 Vict. c. 41, s. 16 (3).
- †     "                 (Escape) Act, 1706 (6 Anne, c. 12).
- †     "                 "                 "     1742 (16 Geo. 2, c. 31).
- † Prisoners' Counsel Act (6 & 7 Will. 4, c. 114).
- †     "                 of War (Escape) Act, 1812 (52 Geo. 3, c. 156).
- †     "                 Removal (Scotland) Act, 1863 (26 & 27 Vict. c. 109).
- †     "                 Returns (Ireland) Act, 1816 (56 Geo. 3, c. 120).

\* Repealed.

† Given by the Short Titles Act, 1896.

¶ Collective title given by or under the Short Titles Act, 1896.

§ Given by the Act.

- † Prisons Act, 1835 (5 & 6 Will. 4, c. 38).
- † " " 1839 (2 & 3 Vict. c. 56).
- † " " 1842 (5 & 6 Vict. c. 98).
- ¶ " (Ireland) Acts, 1826 to 1899. See 62 & 63 Vict. c. 11, s. 3 (3).
- ¶ " (Scotland) Acts, 1860 to 1904. See 4 Edw. 7, c. 35, s. 2.
- † Private Lunatic Asylums (Ireland) Act, 1842 (5 & 6 Vict. c. 123).
- † Privy Council Appeals Act, 1832 (2 & 3 Will. 4, c. 92).
- † " " Registrar Act, 1853 (16 & 17 Vict. c. 85).
- † Probate and Legacy Duties Act, 1808 (48 Geo. 3, c. 149).
- † " " " (Ireland) Act, 1814 (54 Geo. 3, c. 92).
- † " Duty Act—
- 1801 (41 Geo. 3, c. 86). 1860 (23 & 24 Vict. c. 15).
- 1859 (22 & 23 Vict. c. 36). 1861 (24 & 25 Vict. c. 92).
- † Probate Duty (Ireland) Act, 1816 (56 Geo. 3, c. 56).
- † Profane Oaths Act, 1745 (19 Geo. 2, c. 21).
- † Promissory Notes Act, 1863 (26 & 27 Vict. c. 105).
- † " " (Ireland) Act, 1864 (27 & 28 Vict. c. 20).
- † Prorogation Act, 1867 (30 & 31 Vict. c. 81).
- † Prosecutions Expenses Act, 1866 (29 & 30 Vict. c. 52), *temp.*
- Provisors, Statute of, 1350 (25 Edw. 3, stat. 4); 1 Rev. Statt. (2nd ed.), 100.
- † Public Accountants Act, 1800 (39 & 40 Geo. 3, c. 54).
- § " Authorities Protection Act, 1893 (56 & 57 Vict. c. 61).
- † " Companies Act, 1767 (7 Geo. 3, c. 48).
- † " Harbours Act, 1806 (46 Geo. 3, c. 153).
- ¶ " Health Acts, (E), and see 55 & 56 Vict. c. 57, s. 1.
- " " (Ireland) Acts, 1878 to 1896. See 59 & 60 Vict. c. 54.
- † " House (Ireland) Act, 1855 (18 & 19 Vict. c. 114).
- † " Improvements Act, 1860 (23 & 24 Vict. c. 30).
- ¶ " Libraries Acts, 1892 to 1901. See 1 Edw. 7, c. 19, s. 1.
- ¶ " " (Ireland) Acts, 1855 to 1902. See 2 Edw. 7, c. 20, s. 1.
- ¶ " " (Scotland) Acts, 1887 and 1894.
- ¶ " Money Drainage Acts, 1846 to 1856.
- † " Notaries Act, 1801 (41 Geo. 3, c. 79).
- † " " 1833 (3 & 4 Will. 4, c. 70).
- † " " 1843 (6 & 7 Vict. c. 90).
- † " " (Ireland) Act, 1821 (1 & 2 Geo. 4, c. 36).
- † " Officers Protection (Ireland) Act, 1803 (43 Geo. 3, c. 143).
- † " Offices (Ireland) Act, 1817 (57 Geo. 3, c. 62).
- † " " (Scotland) Act, 1817 (57 Geo. 3, c. 64).
- † " Record Office Act, 1838 (1 & 2 Vict. c. 94).
- † " " Offices Acts, 1838 to 1898. See 61 & 62 Vict. c. 12.
- † " Records (Scotland) Act, 1809 (49 Geo. 3, c. 42).
- † " Revenue (Scotland) Act, 1833 (3 & 4 Will. 4, c. 13).
- † " " and Consolidated Fund Charges Act, 1854 (17 & 18 Vict. c. 94).
- ¶ " Schools Acts, 1868 to 1873.
- † " Statues (Metropolis) Act, 1854 (17 & 18 Vict. c. 33).

\* Repealed.

† Given by the Short Titles Act, 1896.

¶ Collective title given by or under the Short Titles Act, 1897.

§ Given by the Act.

- § Given by the Act.

- † Real Property Act, 1845 (8 & 9 Vict. c. 106).
- † „ „ Limitation Act, 1833 (3 & 4 Will. 4, c. 27).
- † „ „ „ „ 1837 (7 Will. 4 & 1 Vict. c. 28).
- § „ „ „ „ 1874 (37 & 38 Vict. c. 57).
- † Recess Elections Act, 1784 (24 Geo. 3, sess. 2, c. 26).
- † Recognisances (Discharge) Act, 1764 (4 Geo. 3, c. 10).
- † „ (Ireland) Act, 1817 (57 Geo. 3, c. 56).
- Reform Acts. See *Representation of the People Acts*.
- Reformatory Schools Acts, 1866 and 1872. See 35 & 36 Vict. c. 21.
- † Refreshment Houses Act, 1860 (23 & 24 Vict. c. 27).
- † „ „ (Ireland) Act, 1860 (23 & 24 Vict. c. 107).
- Regiam Majestatem*.—The oldest preserved Scots Act. Acts of Parliament of Scotland, vol. 1, p. 233. See Bell, Dict. Law Scot., p. 815 (Watson's ed.).
- † Regimental Accounts Act, 1808 (48 Geo. 3, c. 128).
- † Register of Sasines Act, 1829 (10 Geo. 4, c. 19).
- Registration Acts.—The Acts relating to the registration of parliamentary voters in Ireland; 49 & 50 Vict. c. 43, s. 3.
- „ „ The enactments for the time being in force in England, Scotland, and Ireland respectively, relating to the registration of persons entitled to vote at elections for counties and boroughs, inclusive of the Rating Acts; 47 & 48 Vict. c. 3, s. 8 (2). Each expression is to be read distributively with reference to each of those parts of the United Kingdom.
- † Registration of Assurances (Ireland) Act, 1850 (13 & 14 Vict. c. 72).
- † „ Births, Deaths, and Marriages (Scotland) Act, 1854 (17 & 18 Vict. c. 80).
- † „ County Voters (Ireland) Act, 1864 (27 & 28 Vict. c. 22).
- „ Electors Acts, 1843 to 1891. See 54 & 55 Vict. c. 18.
- † Registry of Deeds (Ireland) Act—
  - 1822 (3 Geo. 4, c. 116). 1864 (27 & 28 Vict. c. 76).
  - 1832 (2 & 3 Will. 4, c. 87). 1875 (38 & 39 Vict. c. 57).
- Regulating Act (13 Geo. 3, c. 63).
- Religiosis, Statutum de* (7 Edw. 1, stat. 1).
- † Religious Disabilities Act, 1846 (9 & 10 Vict. c. 59).
- † Remission of Penalties Act, 1859 (22 Vict. c. 32).
- † Renewable Leaseholds Conversion (Ireland) Act, 1868 (31 & 32 Vict. c. 62).
- † Renewal of Leases (Ireland) Act, 1838 (1 & 2 Vict. c. 62).
- † Representation of the People Act, 1832 (2 & 3 Will. 4, c. 45).
- Representation of the People Acts.—The enactments for the time being in force in England, Scotland, and Ireland respectively relating to the representation of the people, inclusive of the Registration Acts. See 47 & 48 Vict. c. 3, s. 8.
- † Representation of the People (Ireland) Act, 1832 (2 & 3 Will. 4, c. 88).

\* Repealed.

† Given by the Short Titles Act, 1896.

‡ Collective title given by or under the Short Titles Act, 1896.

§ Given by the Act.

- † Representation of the People (Ireland) Act, 1850 (13 & 14 Vict. c. 69).  
†       "       "       "       "       "       "       1861 (24 & 25 Vict. c. 60).  
†       "       "       "       "       "       "       (Scotland) Act, 1832 (2 & 3 Will. 4, c. 65).  
†       "       "       "       "       "       "       1835 (5 & 6 Will. 4, c. 78).  
† Representative Peers (Ireland) Act, 1851 (14 & 15 Vict. c. 87).  
†       "       "       "       "       "       "       1857 (20 & 21 Vict. c. 33).  
†       "       "       "       "       "       "       (Scotland) Act, 1847 (10 & 11 Vict. c. 52).  
† Rescue Act, 1821 (1 & 2 Geo. 4, c. 88).  
† Reserve Forces Act, 1870 (33 & 34 Vict. c. 67).  
†       "       "       "       "       "       "       Acts, 1882 and 1890. See 53 & 54 Vict. c. 42.  
† Residence of Incumbents Act, 1869 (32 & 33 Vict. c. 109).  
† Resident Magistrates and Police Commissioners Salaries Act, 1874 (37 & 38 Vict. c. 23, I.).  
† Restraining Act (13 Eliz. c. 10).  
† Returning Officers Act, 1854 (17 & 18 Vict. c. 57).  
† Revenue Act—  
1845 (8 & 9 Vict. c. 76).       (No. 1) 1865 (28 & 29 Vict. c. 30).  
(No. 1) 1861 (24 & 25 Vict. c. 21).       (No. 2) 1865 (28 & 29 Vict. c. 96).  
(No. 2) 1861 (24 & 25 Vict. c. 91).       1866 (29 & 30 Vict. c. 36).  
1862 (25 & 26 Vict. c. 22).       1867 (30 & 31 Vict. c. 90).  
1863 (26 & 27 Vict. c. 33).       1868 (31 & 32 Vict. c. 28).  
(No. 1) 1864 (27 & 28 Vict. c. 18).       1869 (32 & 33 Vict. c. 14).  
(No. 2) 1864 (27 & 28 Vict. c. 56).  
† Revenue (Ireland) Act, 1806 (46 Geo. 3, c. 106).  
†       "       "       "       "       "       "       (Scotland) Act, 1718 (5 Geo. 1, c. 20).  
†       "       "       "       "       "       "       (Transfer of Charges) Act, 1856 (19 & 20 Vict. c. 59).  
† Revestment, Act of (5 Geo. 3, c. 26), Isle of Man (Purchase).  
† Revising Barristers Act, 1866 (29 & 30 Vict. c. 54).  
† Richmond Lunatic Asylum Act, 1830 (11 Geo. 4 & 1 Will. 4, c. 22, I.).  
"       "       "       "       "       "       1831 (1 Will. 4, c. 13, I.).  
Right, Petition of, 1627 (3 Chas. 1, c. 1); 1 Rev. Statt. 585.  
† Rights, Bill of, 1688 (1 Will. & Mar. s. 2, c. 2); 1 Rev. Statt. 690.  
† Riot Act (1 Geo. 1, stat. 2, c. 5). See 1 Steph. Cr. Law, p. 292.  
† Riotous Assemblies (Scotland) Act, 1822 (3 Geo. 4, c. 33).  
† Rivers Pollution Prevention Act, 1893 (56 & 57 Vict. c. 31).  
"       "       "       "       "       "       Acts, 1876 and 1893. See 56 & 57 Vict. c. 31.  
† Roads Amendment Act, 1880 (43 Vict. c. 7, S.).  
† Rogue Money Act (11 Geo. 1, c. 26, S.).  
† Rolls Estate Act, 1837 (7 Will. 4 & 1 Vict. c. 46).  
† Rolt's Act (25 & 26 Vict. c. 42).  
† Roman Catholic Churches Act, 1832 (2 & 3 Will. 4, c. 115).  
†       "       "       "       "       "       "       1860 (23 & 24 Vict. c. 134).  
†       "       "       "       "       "       "       Relief Act, 1791 (31 Geo. 3, c. 32).  
†       "       "       "       "       "       "       1829 (10 Geo. 4, c. 7).

\* Revealed.

† Given by the Short Titles Act, 1896.

\* Collective title given by or under the Short Titles Act, 1896.

§ Given by the Act.

- Romilly's (Sir Samuel) Acts (48 Geo. 3, c. 129; 52 Geo. 3, c. 101).  
 Rosebery's (Lord) Act (6 & 7 Will. 4, c. 42), Entail, S.  
 † Royal Marines Act, 1847 (10 & 11 Vict. c. 63).  
 † " " " 1857 (20 Vict. c. 1).  
 † " Marriages Act, 1772 (12 Geo. 3, c. 11). See 1 Steph. Hist.  
     Cr. Law, 291; *Sussex Peerage Claim*, 6 St. Tr. N. S. 79.  
 † " Naval Reserve (Volunteer) Act, 1859 (22 & 23 Vict. c. 40).  
     " Supremacy Act, 1558 (1 Eliz. c. 1); 1 Rev. Statt. 463.  
 † " Titles Act, 1876 (39 & 40 Vict. c. 10).  
 Russell Gurney's Acts (30 & 31 Vict. c. 35, and 31 & 32 Vict. c. 116).  
 Rutherford's (Lord) Act (11 & 12 Vict. c. 36), Entail, S.  
 Rutland, Statute of (12 Edw. 1; 10 Edw. 1, Ruffhead).
- St. Leonards (Lord) Acts (1) (22 & 23 Vict. c. 35; 23 & 24 Vict.  
     c. 38; (2) 30 & 31 Vict. c. 105).  
 † Sale of Advowsons Act, 1856 (19 & 20 Vict. c. 50).  
 † " Beer Act, 1795 (35 Geo. 3, c. 113).  
 † " Farming Stock Act, 1816 (56 Geo. 3, c. 50).  
     " Food and Drugs Acts, 1875 to 1899. See 62 & 63 Vict. c. 51,  
     s. 28 (1).  
 † " Game (Dublin) Act, 1865 (28 & 29 Vict. c. 2).  
 † " Gas Act, 1859 (22 & 23 Vict. c. 66).  
 † " " " 1860 (23 & 24 Vict. c. 146).  
 † " " (Scotland) Act, 1864 (27 & 28 Vict. c. 96).  
 § " Goods Act, 1893 (56 & 57 Vict. c. 71).  
 † " Offices Act, 1551 (5 & 6 Edw. 6, c. 16).  
 † " " 1809 (49 Geo. 3, c. 126).  
 † " Spirits Act, 1750 (24 Geo. 2, c. 40).  
 † " " 1862 (25 & 26 Vict. c. 38).  
 † Sales to the Crown Act, 1746 (20 Geo. 2, c. 51).  
 † " of Reversions Act, 1867 (31 & 32 Vict. c. 4).  
 ¶ Salmon Fisheries (Scotland) Acts, 1828 to 1868.  
 ¶ " and Fresh Water Fisheries Acts, 1861 to 1896. See 59 &  
     60 Vict. c. 18.  
 † Sanitary Law Amendment Act, 1874 (37 & 38 Vict. c. 89).  
 † Sardinia Loan Act, 1855 (18 & 19 Vict. c. 17).  
 † " " 1856 (19 & 20 Vict. c. 39).  
 † Satisfied Terms Act, 1845 (8 & 9 Vict. c. 112).  
 † Savings Bank Act—  
     1828 (9 Geo. 4, c. 92). 1835 (5 & 6 Will. 4, c. 57).  
     1833 (3 & 4 Will. 4, c. 14). 1844 (7 & 8 Vict. c. 83).  
 † Savings Bank (Charitable Societies) Act, 1859 (22 & 23 Vict. c. 53).  
 † " " Investment Act, 1863 (26 & 27 Vict. c. 25).  
 Scholefield's Act (23 & 24 Vict. c. 84).  
 † School Grants Act, 1855 (18 & 19 Vict. c. 131).  
 ¶ " Sites Acts.  
 † " " (Ireland) Act, 1810 (50 Geo. 3, c. 33).  
 † Scientific Societies Act, 1843 (6 & 7 Vict. c. 36).

\* Repealed.

† Given by the Short Titles Act, 1896.

¶ Collective title given by or under the Short Titles Act, 1896.

§ Given by the Act.



- \* Repealed.

† Given by the Short Titles Act, 1896.

\* Collective title given by or under the Short Titles Act, 1896.

§ Given by the Act.

Six Acts, The (60 Geo. 3 & 1 Geo. 4, cc. 1, 2, 4, 6, 8, 9).

† Slave Trade Act—

1824 (5 Geo. 4, c. 113). § 1873 (36 & 37 Vict. c. 88).

1843 (6 & 7 Vict. c. 98). † 1876 (39 & 40 Vict. c. 46).

† Slavery Abolition Act, 1833 (3 & 4 Will. 4, c. 73).

† Small Debt (Scotland) Acts, 1837 to 1889.

† „ „ „ Act, 1837 (7 Will. 4 & 1 Vict. c. 41).

† „ „ Debts Act, 1845 (8 & 9 Vict. c. 127).

„ „ Tenements Act (59 Geo. 3, c. 12).

„ „ „ Recovery Act, 1838 (1 & 2 Vict. c. 74).

† Smoke Nuisance (Scotland) Act, 1857 (20 & 21 Vict. c. 73).

† „ „ „ 1865 (28 & 29 Vict. c. 102).

† Sodor and Man Act, 1838 (1 & 2 Vict. c. 30).

† Solicitors Act, 1851 (14 & 15 Vict. c. 88).

¶ „ „ „ Acts, 1839 to 1899. And see 62 & 63 Vict. c. 4.

† „ „ (Clerks) Act, 1839 (2 & 3 Vict. c. 33).

† „ „ „ 1844 (7 & 8 Vict. c. 86).

¶ „ „ (Ireland) Acts, 1849 to 1899. See 59 & 60 Vict. c. 14,  
Sch. ii., and the two Acts below.

§ „ „ „ 1898 (61 & 62 Vict. c. 17).

§ „ „ „ 1899 (62 & 63 Vict. c. 4).

† South Africa Offences Act, 1863 (26 & 27 Vict. c. 35).

† „ „ „ Australia Act, 1842 (5 & 6 Vict. c. 61).

† „ „ „ Wales Highways Act, 1860 (23 & 24 Vict. c. 68).

† „ „ „ (Turnpike Roads) Act, 1847 (10 & 11 Vict. c. 72).

† Special Constables Act, 1831 (1 & 2 Will. 4, c. 41).

† „ „ „ 1835 (5 & 6 Will. 4, c. 43).

† „ „ „ 1838 (1 & 2 Vict. c. 80).

† „ „ „ (Ireland) Act, 1832 (2 & 3 Will. 4, c. 108).

† „ „ „ 1845 (8 & 9 Vict. c. 46).

† Spirits Act, 1742 (16 Geo. 2, c. 8).

§ „ „ „ 1880 (43 & 44 Vict. c. 24).

† „ „ „ (Ireland) Act, 1855 (18 & 19 Vict. c. 103).

† „ „ „ (No. 2) Act, 1815 (55 Geo. 3, c. 104).

† „ „ „ Act, 1845 (8 & 9 Vict. c. 64).

† „ „ „ 1854 (17 & 18 Vict. c. 89).

† „ „ „ (Strength Ascertainment) Act, 1818 (58 Geo. 3, c. 104).

† Spiritual Duties Act, 1839 (2 & 3 Vict. c. 30).

† Stage Carriages Act, 1832 (2 & 3 Will. 4, c. 120).

† „ „ „ Coaches (Scotland) Act, 1820 (1 Geo. 4, c. 4).

† Stamp Act—

1804 (44 Geo. 3, c. 98). 1854 (17 & 18 Vict. c. 83).

1815 (55 Geo. 3, c. 184). 1891 (54 & 55 Vict. c. 39).

1853 (16 & 17 Vict. c. 59).

† Stamp Duties Act, 1835 (5 & 6 Will. 4, c. 64).

† „ „ „ in Law Proceedings (Ireland) Act, 1821 (1 & 2 Geo. 4,  
c. 112).

† „ „ „ (Ireland) Act, 1815 (55 Geo. 3, c. 100).

† „ „ „ „ 1842 (5 & 6 Vict. c. 82).

\* Repealed.

† Given by the Short Titles Act, 1896.

¶ Collective title given by or under the Short Titles Act, 1896.

§ Given by the Act.

## † Stannaries Act—

1836 (6 &amp; 7 Will. 4, c. 106). § 1869 (32 &amp; 33 Vict. c. 19).

\* 1839 (2 &amp; 3 Vict. c. 58). § 1887 (50 &amp; 51 Vict. c. 43).

1855 (18 &amp; 19 Vict. c. 32).

See 59 &amp; 60 Vict. c. 45.

Staple, Statute of the (27 Edw. 3, stat. 2).

† Starr and Bent Act, 1741 (15 Geo. 2, c. 33).

† Statute of Distribution (22 &amp; 23 Chas. 2, c. 10).

† „ Frauds (29 Chas. 2, c. 3).

† „ „ Amendment Act, 1828 (9 Geo. 4, c. 14).

† „ Uses (27 Hen. 8, c. 10).

† Statutory Commissioners Act, 1823 (4 Geo. 4, c. 35).

† „ Declarations Act, 1835 (5 &amp; 6 Will. 4, c. 62); and see 44 &amp; 45 Vict. c. 41, s. 68.

† Stealing of Vegetables Act, 1772 (13 Geo. 3, c. 32).

† Steam Engines (Furnaces) Act, 1821 (1 &amp; 2 Geo. 4, c. 41).

† „ Whistles Act, 1872 (35 &amp; 36 Vict. c. 61).

† Still Licences Act, 1846 (9 &amp; 10 Vict. c. 90).

† Stipendiary Magistrates Act, 1858 (21 &amp; 22 Vict. c. 73).

§ „ „ „ 1863 (26 &amp; 27 Vict. c. 97).

† „ „ „ 1869 (32 &amp; 33 Vict. c. 38).

† Straits Settlements Act, 1866 (29 &amp; 30 Vict. c. 115).

† „ „ Offences Act, 1874 (37 &amp; 38 Vict. c. 38).

Sturges Bourne's Acts (58 Geo. 3, c. 69; 59 Geo. 3, c. 12).

Style Act, The (24 Geo. 2, c. 33). See 2 Rev. Stat. (2nd ed.), 285.

Submission, Act of (23 Hen. 8, c. 14).

† Succession to the Crown Act, 1707 (6 Anne, c. 41).

## Summary Jurisdiction Act—

† 1848 (11 &amp; 12 Vict. c. 43). § 1879 (42 &amp; 43 Vict. c. 49).

† 1857 (20 &amp; 21 Vict. c. 43). § 1884 (47 &amp; 48 Vict. c. 43).

† 1863 (26 &amp; 27 Vict. c. 77). § 1899 (62 &amp; 63 Vict. c. 22).

Summary Jurisdiction Acts defined (52 & 53 Vict. c. 63, s. 13 (7), (8), (9), (10)). See *Boulter v. Kent Justices*, (1897) App. Cas. 556; *R. v. Sunderland Justices*, (1901) 2 K. B. 357, 368.

§ Summary Jurisdiction (Ireland) Act, 1851 (14 &amp; 15 Vict. c. 93).

§ „ „ „ 1862 (25 &amp; 26 Vict. c. 50).

§ „ „ (Married Women) Act, 1895 (58 &amp; 59 Vict. c. 39).

„ „ (Scotland) Acts, 1864 and 1881. See 44 &amp; 45 Vict. c. 33, s. 1 (52 &amp; 53 Vict. c. 63, s. 13).

## † Sunday Observance Act—

1625 (1 Chas. 1, c. 1). 1780 (21 Geo. 3, c. 49).

1677 (29 Chas. 2, c. 7). 1833 (3 &amp; 4 Will. 4, c. 31).

§ Sunday Observation (Prosecution) Act, 1871 (34 &amp; 35 Vict. c. 87).

¶ Superannuation Acts, 1834 to 1892.

† „ „ (Metropolis) Act, 1866 (29 &amp; 30 Vict. c. 31).

† Superior Courts (Officers) Act, 1837 (7 Will. 4 &amp; 1 Vict. c. 30).

\* Repealed.

† Given by the Short Titles Act, 1896.

¶ Collective title given by or under the Short Titles Act, 1896.

§ Given by the Act.

- Supremacy, Act of (1 Eliz. c. 1).  
 Survey (Great Britain) Acts, 1841 to 1870. See 33 & 34 Vict. c. 23.  
 „ (Ireland) Acts, 1825 to 1870. See 33 & 34 Vict. c. 23.
- Talfourd's Acts: (1), (2 & 3 Vict. c. 54\*), Infants; (2), (5 & 6 Vict. c. 45), Copyright.
- † *Tallagio non concedendo*, *Statutum de*, 1297 (25 Edw. 1); 1 Rev. Statt. (2nd ed.), 56.
- † Taxation of Colonies Act, 1778 (18 Geo. 3, c. 12).
- † Taxes Act, 1856 (19 & 20 Vict. c. 80).
- § „ Management Act, 1880 (43 & 44 Vict. c. 19).  
 „ (Regulation of Remuneration) Acts, 1891 and 1892. See 55 & 56 Vict. c. 25.
- † Taxing Master's (Ireland) Act, 1848 (11 & 12 Vict. c. 132).  
 Taylor's (Michael Angelo) Act (57 Geo. 3, c. xxix.).  
 „ (Peter) Act (34 & 35 Vict. c. 87).  
 Technical Instruction Acts, 1889 to 1891. See 54 & 55 Vict. c. 4.
- † Teinds Act; 1808 (48 Geo. 3, c. 138).  
 „ „ 1810 (50 Geo. 3, c. 84).  
 „ „ 1824 (5 Geo. 4, c. 72).
- † Telegraph Acts, 1863 to 1899. See 59 & 60 Vict. c. 14, Sch. ii.; 60 & 61 Vict. c. 41, s. 4; 62 & 63 Vict. c. 38, s. 4.  
*Tenentibus per legem Angliæ*, *Statutum de (incert. temp.)*; 1 Rev. Statt. (2nd ed.), 78.
- † Tenterden's (Lord) Acts: (1), (9 Geo. 4, c. 14); (2), (2 & 3 Will. 4, c. 71), Prescription.
- † Tenures Abolition Act, 1746 (20 Geo. 2, c. 50).
- § Territorial Waters Jurisdiction Act, 1878 (41 & 42 Vict. c. 73).
- † Test Abolition Act, 1867 (30 & 31 Vict. c. 62).
- \* Tests Act (25 Chas. 2, c. 2).
- † Textile Manufactures (Ireland) Act, 1840 (3 & 4 Vict. c. 91).  
 „ „ „ „ 1842 (5 & 6 Vict. c. 68).  
 „ „ „ „ 1867 (30 & 31 Vict. c. 60).
- † Theatres Act, 1843 (6 & 7 Vict. c. 68).
- † Theft Act, 1730 (4 Geo. 2, c. 32).  
 Thellusson Act (39 & 40 Geo. 3, c. 98); 2 Rev. Statt. (2nd ed.), 912.
- † Thirlage Act, 1779 (39 Geo. 3, c. 55, S.). See 8 Rettie (Sc.), 514.
- † Threshing Machines Act, 1878 (41 & 42 Vict. c. 12).
- † Tidd Pratt's Act (6 & 7 Vict. c. 36).
- † Tin Duties Act, 1838 (1 & 2 Vict. c. 120).  
 Tippling Act (24 Geo. 2, c. 40); 2 Rev. Statt. (2nd ed.), 275; cf. 30 & 31 Vict. c. 142, s. 4; and 51 & 52 Vict. c. 43, s. 182.
- ¶ Tithe Acts, 1836 to 1891.
- |                                     |                                |
|-------------------------------------|--------------------------------|
| † 1832 (2 & 3 Will. 4, c. 100).     | † 1842 (5 & 6 Vict. c. 54).    |
| † 1836 (6 & 7 Will. 4, c. 71).      | † 1846 (9 & 10 Vict. c. 73).   |
| † 1837 (7 Will. 4 & 1 Vict. c. 69). | † 1847 (10 & 11 Vict. c. 104). |
| † 1838 (1 & 2 Vict. c. 64).         | † 1860 (23 & 24 Vict. c. 93).  |
| † 1839 (2 & 3 Vict. c. 62).         | § 1878 (41 & 42 Vict. c. 42).  |
| † 1840 (3 & 4 Vict. c. 15).         |                                |

\* Repealed.

† Given by the Short Titles Act, 1896.

¶ Collective title given by or under the Short Titles Act, 1896.

§ Given by the Act.

- † Tithe Arrears (Ireland) Act, 1839 (2 & 3 Vict. c. 3).  
 † „ Rating Act, 1851 (14 & 15 Vict. c. 50).  
 † „ Rent Charge (Ireland) Act, 1838 (1 & 2 Vict. c. 109).  
 † „ „ „ „ 1848 (11 & 12 Vict. c. 80).  
 † Tithes and Church Rates Recovery Act, 1714 (1 Geo. 1, st. 2, c. 6).  
 † Tobacco Act, 1782 (22 Geo. 3, c. 73).  
 † „ „ 1840 (3 & 4 Vict. c. 18).  
 † „ „ 1842 (5 & 6 Vict. c. 93).  
 † „ Cultivation Act, 1831 (1 & 2 Will. 4, c. 13).  
 Toleration Act, 1688 (1 Will. & Mar. c. 18); 1 Rev. Statt. (2nd ed.), 684.  
 † Tolls (Ireland) Act, 1817 (57 Geo. 3, c. 108).  
 \* Torrens' Acts (1) (31 & 32 Vict. c. 30; 48 & 49 Vict. c. 34).  
 „ „ (2) Australian Acts for Registration of Title to Land.  
 † Town Gardens Protection Act, 1863 (26 & 27 Vict. c. 13).  
 ¶ „ Police Clauses Acts, 1847 and 1889 (10 & 11 Vict. c. 89; 52 & 53 Vict. c. 14).  
 § Towns Improvement Clauses Act, 1847 (10 & 11 Vict. c. 34).  
 Trade Union Acts, 1871 and 1876. See 39 & 40 Vict. c. 22.  
 † Trading Partnerships Act, 1841 (4 & 5 Vict. c. 14).  
 † Trafalgar Square Act, 1844 (7 & 8 Vict. c. 60).  
 † Traffic Regulation (Scotland) Act, 1772 (12 Geo. 3, c. 45).  
 Trailbaston, Statute of (*incert. temp.*). Vide 2 Reeves, Hist. Eng. Law, 169.  
 ¶ Tramways (Ireland) Acts, 1860 to 1900. See 63 & 64 Vict. c. 60, s. 4.  
 † Transfer of Stock Act, 1800 (39 & 40 Geo. 3, c. 36).  
 † „ „ (Ireland) Act, 1820 (1 Geo. 4, c. 5).  
 † „ Works (Ireland) Act, 1856 (19 & 20 Vict. c. 37).  
 † Transportation Act—  
     1824 (5 Geo. 4, c. 84).                      1834 (4 & 5 Will. 4, c. 67).  
     1825 (6 Geo. 4, c. 69).                    1843 (6 & 7 Vict. c. 7).  
     1830 (11 Geo. 4 & 1 Will. 4, c. 39).      1847 (10 & 11 Vict. c. 67).  
 † Transportation (Ireland) Act, 1849 (12 & 13 Vict. c. 27).  
 † Treason Act—  
     1351 (25 Edw. 3, stat. 5, c. 2).      1795 (36 Geo. 3, c. 7).  
     1708 (7 Anne, c. 21).                    1800 (39 & 40 Geo. 3, c. 23).  
     1746 (20 Geo. 2, c. 30).                1814 (54 Geo. 3, c. 146).  
     1766 (6 Geo. 3, c. 53).                1817 (57 Geo. 3, c. 6).  
     1790 (30 Geo. 3, c. 48).                1842 (5 & 6 Vict. c. 51).  
 † Treason Felony Act, 1848 (11 & 12 Vict. c. 12).  
 † „ (Ireland) Act, 1821 (1 & 2 Geo. 4, c. 24).  
 † „ „ „ 1851 (17 & 18 Vict. c. 26).  
 † „ Outlawries (Scotland) Act, 1748 (22 Geo. 2, c. 48).  
 Treasons, Statute of (25 Edw. 3, stat. 5, c. 2).  
 † Treasury Instruments Signature Act, 1849 (12 & 13 Vict. c. 89).  
 § Trial of Lunatics Act, 1883 (46 & 47 Vict. c. 38).  
 † „ Peers (Scotland) Act, 1825 (6 Geo. 4, c. 66).

\* Repealed.

† Given by the Short Titles Act, 1896.

¶ Collective title given by or under the Short Titles Act, 1896.

§ Given by the Act.

- † Trials for Felony Act, 1836 (6 & 7 Will. 4, c. 114).
- Triennial Act (1664, 16 Chas. 2, c. 4).
- † Trout (Scotland) Act, 1845 (8 & 9 Vict. c. 26).
- † " " " " 1860 (23 & 24 Vict. c. 45).
- " " " " Acts, 1845 to 1902. See 2 Edw. 7, c. 29.
- † Truck Act, 1831 (1 & 2 Will. 4, c. 37).
- " " " " Acts, 1831 to 1896. See 59 & 60 Vict. c. 44, s. 12.
- † Trustee Act, 1852 (15 & 16 Vict. c. 55).
- § " " 1893 (56 & 57 Vict. c. 53, amended by 57 & 58 Vict. c. 10).
- ¶ " " Appointment Acts, 1850 to 1890.
- ¶ " " Savings Bank Acts, 1863 to 1904. See 4 Edw. 7, c. 8, s. 16.
- ¶ Trusts (Scotland) Acts, 1801 to 1898. See 59 & 60 Vict. c. 14, Sched. ii., and 61 & 62 Vict. c. 42.
- Tumultuous Petitioning, Act against (13 Chas. 2, c. 5). See 1 Steph. Hist. Cr. Law, 291.
- † " " Risings (Ireland) Act, 1831 (1 & 2 Will. 4, c. 44).
- † Turkish Loan Act, 1855 (18 & 19 Vict. c. 99).
- \* Turner's (Sir G.) Act (13 & 14 Vict. c. 35).
- † Turnpike Roads Act, 1822 (3 Geo. 4, c. 126).
- † " " (Scotland) Act, 1758 (32 Geo. 2, c. 15).
- † " " Trusts Relief Act, 1861 (24 & 25 Vict. c. 46).

Uniformity, Act of (1) (1 Eliz. c. 2); 1 Rev. Statt. (2nd ed.), 469.  
 (2) (14 Chas. 2, c. 4); 1 Rev. Statt. (2nd ed.), 631.

- † Union and Parish Property Act, 1835 (5 & 6 Will. 4, c. 69).
- † " " " " 1837 (7 Will. 4 & 1 Vict. c. 50).
- " " Assessments Acts, 1862 to 1880. See 43 & 44 Vict. c. 7.
- § " Chargeability Act, 1865 (28 & 29 Vict. c. 79).
- " " of Benefices Act, 1860 (23 & 24 Vict. c. 142).
- † " Officers (Ireland) Act, 1872 (35 & 36 Vict. c. 89).
- † " " Superannuation (Ireland) Act, 1865 (28 & 29 Vict. c. 26).
- † " with Ireland Act, 1800 (39 & 40 Geo. 3, c. 67).
- † " " Scotland Act, 1706 (6 Anne, c. 11).
- † " " Amendment Act, 1707 (6 Anne, c. 40).
- † Universities Act, 1825 (6 Geo. 4, c. 97).
- † " (Scotland) Act, 1853 (16 & 17 Vict. c. 89).
- † " " " " 1858 (21 & 22 Vict. c. 83).
- † " " " " 1859 (22 & 23 Vict. c. 24).
- † " (Wine Licence) Act, 1743 (17 Geo. 2, c. 40).
- † University Elections Act, 1861 (24 & 25 Vict. c. 53).
- † " " of Dublin Registration Act, 1842 (5 & 6 Vict. c. 74).
- † Unlawful Combination (Ireland) Act, 1803 (43 Geo. 3, c. 86).
- † " " Drilling Act, 1819 (60 Geo. 3 & 1 Geo. 4, c. 1).
- † " " Games Act, 1728 (2 Geo. 2, c. 28).

\* Repealed.

† Given by the Short Titles Act, 1896.

¶ Collective title given by or under the Short Titles Act, 1896.

§ Given by the Act.

- † Unlawful Oaths Act, 1797 (37 Geo. 3, c. 123).<sup>†</sup>
- †     "     "     "     1812 (52 Geo. 3, c. 104).
- †     "     "     "     (Ireland) Act, 1810 (50 Geo. 3, c. 102).
- †     "     "     "     1823 (4 Geo. 4, c. 87).
- †     "     Societies Act, 1799 (39 Geo. 3, c. 79).
- † Uses, Statute of (27 Hen. 8, c. 10) ; 1 Rev. Statt. (2nd ed.), 328.
- † Usury Laws Repeal Act, 1854 (17 & 18 Vict. c. 90).

Vaccination Acts, 1867 to 1898. See 61 & 62 Vict. c. 49.

- †     "     (Ireland) Act, 1858 (21 & 22 Vict. c. 64).
- †     "     "     "     1863 (26 & 27 Vict. c. 52).
- †     "     (Scotland) Act, 1863 (26 & 27 Vict. c. 108).
- † Vagrancy Act, 1824 (5 Geo. 4, c. 83).
- †     "     "     1838 (1 & 2 Vict. c. 38).
- †     "     (Ireland) Act, 1847 (10 & 11 Vict. c. 84).
- † Valuation (Ireland) Act, 1852 (15 & 16 Vict. c. 63).
- †     "     "     "     1854 (17 & 18 Vict. c. 8).
- †     "     "     "     1864 (27 & 28 Vict. c. 52).
- † Vancouver's Island Act, 1849 (12 & 13 Vict. c. 48).
- § Vendor and Purchaser Act, 1874 (37 & 38 Vict. c. 78).
- ¶ Vestries Acts, 1818 to 1853—
- †     1818 (58 Geo. 3, c. 69).     † 1850 (13 & 14 Vict. c. 57).
- †     1819 (59 Geo. 3, c. 85).     † 1853 (16 & 17 Vict. c. 65).
- †     1831 (1 & 2 Will. 4, c. 60).

† Vexatious Indictments Act, 1859 (22 & 23 Vict. c. 17).

† Victoria Constitution Act, 1855 (18 & 19 Vict. c. 55).

† Vinegar Act, 1844 (7 & 8 Vict. c. 25).

\* *Viris religiosis, Statutum de* (7 Edw. 1).

\* Vouchers, Statute of (20 Edw. 1, stat. 1).

Wagering Act (19 Geo. 2, c. 37).

- † Wages Arrestment (Scotland) Act, 1845 (8 & 9 Vict. c. 39).
- Wales, Statute of (27 Hen. 8, c. 26) ; 1 Rev. Statt. (2nd ed.), 337.
- †     "     and Berwick Act, 1746 (20 Geo. 2, c. 42). *Vide ante*, p. 387.
- Wallia statutum* (12 Edw. 1).
- \* Waltham Black Act (9 Geo. 1, c. 22). See *Davis' case* (1783), 1 Leach C. C. (2nd ed.) 228.
- \* Wards, Statute of (28 Edw. 1, stat. 1).
- † Warrants of Attorney Act, 1822 (3 Geo. 4, c. 39).
- †     "     "     "     1843 (6 & 7 Vict. c. 66).
- \* Waste, Statute of (20 Edw. 1, stat. 2).
- Waterworks Clauses Acts, 1847 to 1863. See 26 & 27 Vict. c. 93.
- † Wedding Rings Act, 1855 (18 & 19 Vict. c. 60).
- † Weights and Measures Act, 1824 (5 Geo. 4, c. 74).
- "     "     Acts, 1878 to 1904. See 60 & 61 Vict. c. 46, s. 3; 4 Edw. 7, c. 28, s. 2.
- † Welsh Cathedrals Act, 1843 (6 & 7 Vict. c. 77).
- † West Africa Act, 1821 (1 & 2 Geo. 4, c. 28).

\* Repealed.

† Given by the Short Titles Act, 1896.

¶ Collective title given by or under the Short Titles Act, 1896.

§ Given by the Act.

- \* West African Offences Act, 1871 (34 & 35 Vict. c. 8).
- † „ Indian Prisons Act, 1838 (1 & 2 Vict. c. 67).
- † „ Indies (Salaries) Act, 1868 (31 & 32 Vict. c. 120).
- \* Westbury's Act (25 & 26 Vict. c. 53), Land Transfer.
- Westminster, Statute of, the First (3 Edw. 1); 1 Rev. Stat. (2nd ed.), 9.
- „ the Second (13 Edw. 1); 1 Rev. Stat.
- „ (2nd ed.), 17.
- † Whipping Act, 1820 (1 Geo. 4, c. 57).
- † „ 1862 (25 & 26 Vict. c. 18).
- † Whiteboy Acts (1) (I.); 15 & 16 Geo. 3, c. 21; 17 & 18 Geo. 3, c. 36;  
27 Geo. 3, c. 15 (I.); 36 Geo. 3, c. 32; Rev. Stat.
- Ireland, 540, 551, 704.
- „ Acts (2) (U. K.); 40 Geo. 3, c. 96; 50 Geo. 3, c. 102;  
1 & 2 Will. 4, c. 44; 5 & 6 Vict. c. 28. See *R. v. Barrett*  
(1886), 18 L. R. Ir. 430.
- † White Herring Fisheries Act, 1771 (11 Geo. 3, c. 31).
- † „ „ Fishery (Scotland) Act, 1821 (1 & 2 Geo. 4, c. 79).
- † „ „ „ „ 1861 (24 & 25 Vict. c. 72).
- † Wild Birds Protection Acts, 1880 to 1904. See 59 & 60 Vict. c. 56;  
2 Edw. 7, c. 6, s. 2; 4 Edw. 7, c. 4, s. 3; c. 10, s. 2.
- † Wills Act, 1837 (7 Will. 4 & 1 Vict. c. 26).
- † „ 1861 (24 & 25 Vict. c. 114).
- „ Statute of (34 & 35 Hen. 8, c. 5).
- Wilmot's (Sir Eardley) Act (3 & 4 Vict. c. 77), Grammar Schools.
- Winchester, or Winton, Statute of (13 Edw. 1, stat. 2).
- Winter Assizes Acts, 1876 and 1877. See 40 & 41 Vict. c. 46.
- † Witchcraft Act, 1735 (9 Geo. 2, c. 5).
- † Witnesses Act, 1806 (46 Geo. 3, c. 37).
- † „ on Petitions Act, 1801 (41 Geo. 3, c. 105).
- § „ (Public Inquiries) Protection Act, 1892 (55 & 56 Vict.  
c. 64).
- † Workhouse Act, 1816 (56 Geo. 3, c. 129).
- † „ Sites Act, 1857 (20 & 21 Vict. c. 13).
- † Workhouses Act, 1790 (30 Geo. 3, c. 49).
- † Writ of Subpoena Act, 1805 (45 Geo. 3, c. 92).
- † Writs Execution (Scotland) Act, 1877 (40 & 41 Vict. c. 40).
- † „ Registration (Scotland) Act, 1868 (31 & 32 Vict. c. 34).
- Yelverton's Act (21 & 22 Geo. 3, c. 48, Ir.).
- † Yeomanry (Accounts) Act, 1804 (44 Geo. 3, c. 94).
- † „ Act, 1804 (44 Geo. 3, c. 54).
- † „ „ 1817 (57 Geo. 3, c. 44).
- † „ „ 1826 (7 Geo. 4, c. 58).
- † „ Acts, 1802 to 1826.
- † „ (Ireland) Act, 1802 (42 Geo. 3, c. 68).
- † „ (Training) Act, 1816 (56 Geo. 3, c. 39).
- \* York, Statute of (12 Edw. 2, stat. 1).
- † Yorkshire Registries Amendment Act, 1884 (47 & 48 Vict. c. 54).
- Young's (Lord) Act (35 & 36 Vict. c. 62), Education (S.).

\* Repealed.

† Given by the Short Titles Act, 1896.

¶ Collective title given by or under the Short Titles Act, 1896.

§ Given by the Act.



## APPENDIX C.

### INTERPRETATION ACTS.

“The extraordinary diversity of opinion to be found in these cases [of construction] furnishes a strong reason for the passing of an Interpretation Act; and I think the passing of such an Act may be regarded as a gentle intimation by the Legislature to the Courts that it understands what it is saying and means what it says.” *Hands v. Law Society* (1890). 17 Ontario App. 41, 57, Burton, J.A.

#### THE INTERPRETATION ACT, 1889 (52 & 53 Vict. c. 63) (a).

*An Act for consolidating enactments relating to the Construction of Acts of Parliament, and for further shortening the Language used in Acts of Parliament.* [30th August, 1889.]

BE it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

#### *Re-enactment of existing Rules.*

1.—(1.) In this Act and in every Act passed after the year one thousand eight hundred and fifty, whether before or after the commencement of this Act, unless the contrary intention appears,—

(a) words importing the masculine gender shall include females; and

(b) words in the singular shall include the plural, and words in the plural shall include the singular (v. *ante*, p. 149).

(2.) The same rules shall be observed in the construction of every enactment relating to an offence punishable on indictment or on summary conviction, when the enactment is contained in an Act passed in or before the year one thousand eight hundred and fifty.

2.—(1.) In the construction of every enactment relating to an offence punishable on indictment or on summary conviction, whether contained in an Act passed before or after the commencement of

Rules as to gender and number.

[=13 & 14 Vict. c. 21, s. 4.]

[=7 & 8 Geo. 4, c. 28, s. 14.] Application of penal Acts to bodies corporate.

(a) This Act applies to Imperial Acts only. For a table showing the legislation of similar character in other parts of the King's Dominions, see *post*, p. 621.

[=7 & 8 Geo. 4, c. 28, s. 14.] this Act, the expression "person" shall, unless the contrary intention appears, include a body corporate (v. *ante*, p. 149).

(2.) Where under any Act, whether passed before or after the commencement of this Act, any forfeiture or penalty is payable to a party aggrieved, it shall be payable to a body corporate in every case where that body is the party aggrieved (v. *ante*, p. 149).

Meanings of certain words in Acts since 1850. [—13 & 14 Vict. c. 21, s. 4.] 3. In every Act passed after the year one thousand eight hundred and fifty, whether before or after the commencement of this Act, the following expressions shall, unless the contrary intention appears, have the meanings hereby respectively assigned to them; namely—

"Month." The expression "month" shall mean calendar month (v. *ante*, pp. 150, 521):

"Land." The expression "land" shall include messuages, tenements, and hereditaments, houses, and buildings of any tenure (v. *ante*, p. 514):

"Oath." The expressions "oath" and "affidavit" shall, in the case of persons for the time being allowed by law to affirm or declare instead of swearing, include affirmation and declaration, and the expression "swear" shall, in the like case, include affirm and declare (v. *ante*, p. 151).

Meaning of "county" in past Acts. [—13 & 14 Vict. c. 21, s. 4.] 4. In every Act passed after the year one thousand eight hundred and fifty and before the commencement of this Act, the expression "county" shall, unless the contrary intention appears, be construed as including a county of a city and a county of a town (v. *ante*, p. 151).

Meaning of "parish." [—29 & 30 Vict. c. 113, s. 18.] 5. In every Act passed after the year one thousand eight hundred and sixty-six, whether before or after the commencement of this Act, the expression "parish" shall, unless the contrary intention appears, mean, as respects England and Wales, a place for which a separate poor rate is or can be made, or for which a separate overseer is or can be appointed (v. *ante*, p. 152).

Meaning of "county court." [—51 & 52 Vict. c. 43, s. 187.] 6. In this Act, and in every Act and Order of Council passed or made after the year one thousand eight hundred and forty-six, whether before or after the commencement of this Act, the expression "county court" shall, unless the contrary intention appears, mean as respects England and Wales a court under the County Courts Act, 1888 (v. *ante*, p. 492).

Meaning of "sheriff clerk," &c. in Scotch Acts. [—7 Will. 4, and 1 Vict. c. 39.] 7. In every Act relating to Scotland, whether passed before or after the commencement of this Act, unless the contrary intention appears—

The expression "sheriff clerk" shall include steward clerk;

The expressions "shire," "sheriffdom," and "county" shall include any stewartry in Scotland (v. *ante*, p. 543).

Sections to be substantive enactments. 8. Every section of an Act shall have effect as a substantive enactment without introductory words (13 & 14 Vict. c. 21, s. 2; v. *ante*, p. 197).

Acts to be public Acts. 9. Every Act passed after the year one thousand eight hundred and fifty, whether before or after the commencement of this Act, shall be a public Act and shall be judicially noticed as such, unless the contrary is expressly provided by the Act (13 & 14 Vict. c. 21, s. 7; v. *ante*, p. 56).

10. Any Act may be altered, amended, or repealed in the same session of Parliament (13 & 14 Vict. c. 21, s. 1; *v. ante*, pp. 289, 337).

Amendment or repeal of Acts in same session.

11.—(1.) Where an Act passed after the year one thousand eight hundred and fifty, whether before or after the commencement of this Act, repeals a repealing enactment, it shall not be construed as reviving any enactment previously repealed, unless words are added reviving that enactment (*v. ante*, pp. 292, 346).

Effect of repeals contained in Acts passed since 1850.

(2.) Where an Act passed after the year one thousand eight hundred and fifty, whether before or after the commencement of this Act, repeals wholly or partially any former enactment and substitutes provisions for the enactment repealed, the repealed enactment shall remain in force until the substituted provisions come into operation (*v. ante*, p. 320).

[=13 & 14 Vict. c. 21, s. 5.]

[=13 & 14 Vict. c. 21, s. 6.]

### *New General Rules of Construction.*

12. In this Act, and in every other Act whether passed before or after the commencement of this Act, the following expressions shall, unless the contrary intention appears, have the meanings hereby respectively assigned to them, namely:—

Official definitions in past and future Acts.

(1.) The expression “the Lord Chancellor” shall, except when used with reference to Ireland only, mean the Lord High Chancellor of Great Britain for the time being, and when used with reference to Ireland only, shall mean the Lord Chancellor of Ireland for the time being.

“Lord Chancellor.”

(2.) The expression “the Treasury” shall mean the Lord High Treasurer for the time being or the Commissioners for the time being of Her Majesty’s Treasury.

“Treasury.”

(3.) The expression “Secretary of State” shall mean one of Her Majesty’s Principal Secretaries of State for the time being.

“Secretary of State.”

(4.) The expression “the Admiralty” shall mean the Lord High Admiral of the United Kingdom for the time being, or the Commissioners for the time being for executing the office of Lord High Admiral of the United Kingdom.

“Admiralty.”

(5.) The expression “the Privy Council” shall, except when used with reference to Ireland only, mean the Lords and others for the time being of Her Majesty’s Most Honourable Privy Council, and when used with reference to Ireland only, shall mean the Privy Council of Ireland for the time being.

“Privy Council.”

(6.) The expression “the Education Department” shall mean the Lords of the Committee for the time being of the Privy Council appointed for Education. (See now 62 & 63 Vict. c. 33, ss. 1, 2.)

“Education Department.”

(7.) The expression “the Scotch Education Department” shall mean the Lords of the Committee for the time being of the Privy Council appointed for Education in Scotland.

“Scotch Education Department.”

(8.) The expression “the Board of Trade” shall mean the Lords of the Committee for the time being of the Privy Council appointed for the consideration of matters relating to trade and foreign plantations.

“Board of Trade.”

(9.) The expression “Lord Lieutenant,” when used with reference to Ireland, shall mean the Lord Lieutenant of Ireland or other chief governors or governor of Ireland for the time being.

“Lord Lieutenant.”

"Chief Secretary." (10.) The expression "Chief Secretary," when used with reference to Ireland, shall mean the Chief Secretary to the Lord Lieutenant for the time being.

"Postmaster General." (11.) The expression "Postmaster General" shall mean Her Majesty's Postmaster General for the time being.

"Commissioners of Woods, &c." (12.) The expression "Commissioners of Woods" or "Commissioners of Woods and Forests" shall mean the Commissioners of Her Majesty's Woods, Forests, and Land Revenues for the time being.

"Commissioners of Works." (13.) The expression "Commissioners of Works" shall mean the Commissioners of Her Majesty's Works and Public Buildings for the time being.

"Charity Commissioners." (14.) The expression "Charity Commissioners" shall mean the Charity Commissioners for England and Wales for the time being.

"Ecclesiastical Commissioners." (15.) The expression "Ecclesiastical Commissioners" shall mean the Ecclesiastical Commissioners for England for the time being.

"Queen Anne's Bounty." (16.) The expression "Queen Anne's Bounty" shall mean the Governors of the Bounty of Queen Anne for the augmentation of the maintenance of the poor clergy.

"National Debt Commissioners." (17.) The expression "National Debt Commissioners" shall mean the Commissioners for the time being for the Reduction of the National Debt.

"Bank of England." (18.) The expression "the Bank of England" shall mean, as circumstances require, the Governor and Company of the Bank of England or the Bank of the Governor and Company of the Bank of England.

"Bank of Ireland." (19.) The expression "the Bank of Ireland" shall mean, as circumstances require, the Governor and Company of the Bank of Ireland, or the Bank of the Governor and Company of the Bank of Ireland.

"Consular officer." (20.) The expression "consular officer" shall include consul-general, consul, vice-consul, consular agent, and any person for the time authorised to discharge the duties of consul-general, consul, or vice-consul. (See *ante*, p. 490.)

Judicial definitions in past and future Acts. 13. In this Act and in every other Act whether passed before or after the commencement of this Act, the following expressions shall, unless the contrary intention appears, have the meanings hereby respectively assigned to them, namely:—

"Supreme Court." (1.) The expression "Supreme Court," when used with reference to England or Ireland, shall mean the Supreme Court of Judicature in England or Ireland, as the case may be, or either branch thereof.

"Court of Appeal." (2.) The expression "Court of Appeal," when used with reference to England or Ireland, shall mean Her Majesty's Court of Appeal in England or Ireland, as the case may be.

"High Court." (3.) The expression "High Court," when used with reference to England or Ireland, shall mean Her Majesty's High Court of Justice in England or Ireland, as the case may be.

"Court of Assize." (4.) The expression "court of assize" shall, as respects England, Wales, and Ireland, mean a court of assize, a court of oyer and terminer, and a court of gaol delivery, or any of them, and shall, as respects England and Wales, include the Central Criminal Court.

(5.) The expression "assizes," as respects England, Wales, and Ireland, shall mean the court of assize usually held in every year, and shall include the sessions of the Central Criminal Court, but shall not include any court of assize held by virtue of any special commission, or, as respects Ireland, any court held by virtue of the powers conferred by section sixty-three of the Supreme Court of Judicature Act (Ireland), 1877. "Assizes."  
40 & 41 Vict.  
c. 57.

(6.) The expression "the Summary Jurisdiction Act, 1848," shall mean the Act of the session of the eleventh and twelfth years of the reign of Her present Majesty, chapter forty-three, intituled "An Act to facilitate the performance of the duties of justices of the peace out of sessions within England and Wales with respect to summary convictions and orders."

(7.) The expression "the Summary Jurisdiction (England) Acts" and the expression "the Summary Jurisdiction (English) Acts" shall respectively mean the Summary Jurisdiction Act, 1848, and the Summary Jurisdiction Act, 1879, and any Act, past or future, amending those Acts or either of them. 11 & 12 Vict.  
c. 43.  
42 & 43 Vict.  
c. 49.

(8.) The expression "the Summary Jurisdiction (Scotland) Acts" shall mean the Summary Jurisdiction (Scotland) Acts, 1864 and 1881, and any Act, past or future, amending those Acts or either of them. 27 & 28 Vict.  
c. 53.  
44 & 45 Vict.  
c. 33.

(9.) The expression "the Summary Jurisdiction (Ireland) Acts" shall mean, as respects the Dublin Metropolitan Police District, the Acts regulating the powers and duties of justices of the peace or of the police of that district, and as respects any other part of Ireland, the Petty Sessions (Ireland) Act, 1851, and any Act, past, or future, amending the same. 14 & 15 Vict.  
c. 93.

(10.) The expression "the Summary Jurisdiction Acts" when used in relation to England or Wales shall mean the Summary Jurisdiction (England) Acts, and when used in relation to Scotland the Summary Jurisdiction (Scotland) Acts, and when used in relation to Ireland the Summary Jurisdiction (Ireland) Acts. "Summary  
Jurisdiction  
Acts."

(11.) The expression "court of summary jurisdiction" shall mean any justice or justices of the peace, or other magistrate, by whatever name called, to whom jurisdiction is given by, or who is authorised to act under, the Summary Jurisdiction Acts, whether in England, Wales, or Ireland, and whether acting under the Summary Jurisdiction Acts or any of them, or under any other Act, or by virtue of his commission, or under the common law (*v. ante*, p. 547). "Court of  
summary  
jurisdiction."

(12.) The expression "petty sessional court" shall, as respects England or Wales, mean a court of summary jurisdiction consisting of two or more justices when sitting in a petty sessional court-house, and shall include the Lord Mayor of the city of London, and any alderman of that city, and any metropolitan or borough police magistrate or other stipendiary magistrate when sitting in a court-house or place at which he is authorised by law to do alone any act authorised to be done by more than one justice of the peace. "Petty ses-  
sional court."

(13.) The expression "petty sessional court-house" shall, as respects England and Wales, mean a court-house or other place at which justices are accustomed to assemble for holding special or petty sessions, or which is for the time being appointed as a substitute for such a court-house or place, and where the justices are "Petty ses-  
sional court-  
house."

accustomed to assemble for either special or petty sessions at more than one court-house or place in a petty sessional division, shall mean any such court-house or place. The expression shall also include any court-house or place at which the Lord Mayor of the city of London or any alderman of that city, or any metropolitan or borough police magistrate or other stipendiary magistrate is authorised by law to do alone any act authorised to be done by more than one justice of the peace.

“Court of quarter sessions.”

(14.) The expression “court of quarter sessions” shall mean the justices of any county, riding, parts, division, or liberty of a county, or of any county of a city, or county of a town, in general or quarter sessions assembled, and shall include the court of the recorder of a municipal borough having a separate court of quarter sessions.

Meaning of “rules of court.”

14. In every Act passed after the commencement of this Act, unless the contrary intention appears, the expression “rules of court” when used in relation to any court shall mean, rules made by the authority having for the time being power to make rules or orders regulating the practice and procedure of such court and as regards Scotland shall include acts of adjournal and acts of sederunt.

The power of the said authority to make rules of court as above defined shall include a power to make rules of court for the purpose of any Act passed after the commencement of this Act, and directing or authorising anything to be done by rules of court.

Meaning of “borough.”

15. In this Act and in every Act passed after the commencement of this Act the following expressions shall, unless the contrary intention appears, have the meanings hereby respectively assigned to them, namely:—

45 & 46 Vict.  
c. 50.

(1.) The expression “municipal borough” shall mean, as respects England and Wales, any place for the time being subject to the Municipal Corporations Act, 1882, and any reference to the mayor, aldermen, and burgesses of a borough shall include a reference to the mayor, aldermen, and citizens of a city, and any reference to the powers, duties, liabilities, or property of the council of a borough shall be construed as a reference to the powers, duties, liabilities, or property of the mayor, aldermen, and burgesses of the borough acting by the council (*v. ante*, p. 151).

3 & 4 Vict.  
c. 108.

(2.) The expression “municipal borough” shall mean, as respects Ireland, any place for the time being subject to the “*Municipal Corporations (Ireland) Act, 1840.*”

(3.) The expression “parliamentary borough” shall mean any borough, burgh, place, or combination of places returning a member or members to serve in Parliament, and not being either a county or division of a county, or a university, or a combination of universities.

(4.) The expression “borough” when used in relation to local government shall mean a municipal borough as above defined, and when used in relation to parliamentary elections or the registration of parliamentary electors shall mean a parliamentary borough as above defined (*v. ante*, p. 151).

Meaning of “guardians” and “union.”

16. In this Act and in every Act passed after the commencement of this Act the following expressions shall, unless the contrary

intention appears, have the meanings hereby respectively assigned to them, namely:—

(1.) The expression "board of guardians" shall, as respects England and Wales, mean a board of guardians elected under the Poor Law Amendment Act, 1834, and the Acts amending the same, and shall include a board of guardians or other body of persons performing under any local Act the like functions to a board of guardians under the Poor Law Amendment Act, 1834. 4 & 5 Will. 4, c. 76.

(2.) The expression "poor law union" shall, as respects England and Wales, mean any parish or union of parishes for which there is a separate board of guardians (v. *ante*, p. 152).

(3.) The expression "board of guardians" shall, as respects Ireland, mean a board of guardians elected under the Act of the Session of the first and second years of the reign of Her present Majesty, chapter fifty-six, intituled, "An Act for the more effectual relief of the destitute poor in Ireland," and the Acts amending the same, and shall include any body of persons appointed by the Local Government Board for Ireland to carry into execution the provisions of those Acts.

(4.) The expression "poor law union" shall, as respects Ireland, mean any townland or place or union, or townlands or places, for which there is a separate board of guardians.

17. In every Act passed after the commencement of this Act the following expressions shall, unless the contrary intention appears, have the meanings hereby respectively assigned to them, namely:—

Definitions relating to elections.

(1.) The expression "parliamentary election" shall mean the election of a member or members to serve in Parliament for a county or division of a county, or parliamentary borough or division of a parliamentary borough, or for a university or combination of universities.

(2.) The expression "parliamentary register of electors" shall mean a register of persons entitled to vote at any parliamentary election.

(3.) The expression "local government register of electors" shall mean as respects an administrative county in England or Wales other than a county borough, the county register, and as respects a county borough or other municipal borough, the burgess roll.

18. In this Act, and in every Act passed after the commencement of this Act, the following expressions shall, unless the contrary intention appears, have the meanings hereby respectively assigned to them, namely:—

Geographical and colonial definitions in future Acts.

(1.) The expression "British Islands" shall mean the United Kingdom, the Channel Islands, and the Isle of Man.

"British Islands."

(2.) The expression "British possession" shall mean any part of Her Majesty's dominions exclusive of the United Kingdom, and where parts of such dominions are under both a central and a local legislature, all parts under the central legislature shall, for the purposes of this definition, be deemed to be one British possession.

"British possession."

(3.) The expression "colony" shall mean any part of Her Majesty's dominions exclusive of the British Islands and of British India, and where parts of such dominions are under both a central and a local legislature, all parts under the central legislature shall, for the purposes of this definition, be deemed to be one colony (see *ante*, p. 405).

"Colony."

"British India."

(4.) The expression "British India" shall mean all territories and places within Her Majesty's dominions, which are for the time being governed by Her Majesty through the Governor-General of India or through any governor or other officer subordinate to the Governor-General of India.

"India."

(5.) The expression "India" shall mean British India together with any territories of any native prince or chief under the suzerainty of Her Majesty exercised through the Governor-General of India, or through any governor or other officer subordinate to the Governor-General of India.

"Governor."

(6.) The expression "Governor" shall, as respects Canada and India, mean the Governor-General, and include any person who for the time being has the powers of the Governor-General, and as respects any other British possession, shall include the officer for the time being administering the government of that possession.

"Colonial legislature."

(7.) The expression "colonial legislature" and the expression "legislature," when used with reference to a British possession, shall respectively mean the authority, other than the Imperial Parliament or Her Majesty the Queen in Council, competent to make laws for a British possession.

Meaning of "person" in future Acts.

19. In this Act and in every Act passed after the commencement of this Act the expression "person" shall, unless the contrary intention appears, include any body of persons corporate or unincorporate (*v. ante*, p. 149).

Meaning of "writing" in past and future Acts.

20. In this Act and in every other Act whether passed before or after the commencement of this Act expressions referring to writing shall, unless the contrary intention appears, be construed as including references to printing, lithography, photography, and other modes of representing or reproducing words in a visible form (*v. ante*, p. 151).

Meaning of "statutory declaration" in past and future Acts. 5 & 6 Will. 4, c. 62.

21. In this Act, and in every other Act, whether passed before or after the commencement of this Act, the expression "statutory declaration" shall, unless the contrary intention appears, mean a declaration made by virtue of the Statutory Declarations Act, 1835 (*v. ante*, p. 151).

Meaning of "financial year" in future Acts.

22. In this Act, and in every Act passed after the commencement of this Act, the expression "financial year" shall, unless the contrary intention appears, mean as respects any matters relating to the Consolidated Fund or moneys provided by Parliament, or to the Exchequer, or to Imperial taxes or finance, the twelve months ending the 31st day of March (*v. ante*, p. 151).

Definition of "Lands Clauses Acts."

23. In any Act passed after the commencement of this Act, unless the contrary intention appears,—

The expression "Land Clauses Acts" shall mean—

8 & 9 Vict. c. 18.  
23 & 24 Vict. c. 106.  
32 & 33 Vict. c. 18.  
46 & 47 Vict. c. 15.  
8 & 9 Vict. c. 19.  
23 & 24 Vict. c. 106.

(a) as respects England and Wales, the Lands Clauses Consolidation Act, 1845, the Lands Clauses Consolidation Acts Amendment Act, 1860, the Lands Clauses Consolidation Act, 1869, and the Lands Clauses (Umpire) Act, 1883, and any Acts for the time being in force amending the same; and

(b) as respects Scotland, the Lands Clauses Consolidation (Scotland) Act, 1845, and the Lands Clauses Consolidation Acts Amendment Act, 1860, and any Acts for the time being in force amending the same; and



(c) as respects Ireland, the Lands Clauses Consolidation Act, 1845, the Lands Clauses Consolidation Acts Amendment Act, 1860, the Railways Act (Ireland), 1851, the Railways Act (Ireland), 1860, the Railways Act (Ireland), 1864, and the Railways Traverse Act, and any Acts for the time being in force amending the same.

8 & 9 Vict.  
c. 18.  
23 & 24 Vict.  
c. 106.  
14 & 15 Vict.  
c. 74.  
23 & 24 Vict.  
c. 97.  
27 & 28 Vict.  
c. 71.  
31 & 32 Vict.  
c. 70.

24. In any Act passed before or after the commencement of this Act the expression "Irish Valuation Acts" shall mean the Acts relating to the valuation of rateable property in Ireland.

25. In this Act and in every other Act, whether passed before or after the commencement of this Act, the expression "ordnance map" shall, unless the contrary intention appears, mean a map made under the powers conferred by the Survey (Great Britain) Acts, 1841 to 1870, or by the Survey (Ireland) Acts, 1825 to 1870, and the Acts amending the same respectively. (See 33 & 34 Vict. c. 13.)

Meaning of  
Irish Valua-  
tion Acts.  
Meaning of  
"ordnance  
map."

26. Where an Act passed after the commencement of this Act authorises or requires any document to be served by post, whether the expression "serve," or the expression "give" or "send," or any other expression is used, then, unless the contrary intention appears, the service shall be deemed to be effected by properly addressing, prepaying, and posting a letter containing the document, and unless the contrary is proved to have been effected at the time at which the letter would be delivered in the ordinary course of post.

Meaning of  
"service by  
post."

27. In every Act passed after the commencement of this Act, the expression "committed for trial" used in relation to any person shall, unless the contrary intention appears, mean, as respects England and Wales, committed to prison with the view of being tried before a judge and jury, whether the person is committed in pursuance of section twenty-two or of section twenty-five of the Indictable Offences Act, 1848, or is committed by a court, judge, coroner, or other authority having power to commit a person to any prison with a view to his trial, and shall include a person who is admitted to bail upon a recognisance to appear and take his trial before a judge and jury.

Meaning of  
"committed  
for trial."

28. In this Act and in every Act passed after the commencement of this Act, unless the contrary intention appears—

The expression "sheriff" shall, as respects Scotland, include a sheriff substitute:

The expression "felony" shall, as respects Scotland, mean a high crime and offence:

The expression "misdemeanour" shall, as respects Scotland, mean an offence.

Meanings of  
"sheriff,"  
"felony,"  
and "mis-  
demeanour"  
in future  
Scotch Acts.

29. In every Act passed after the commencement of this Act, unless the contrary intention appears, the expression "county court" shall, as respects Ireland, mean a civil bill court within the meaning of the County Officers and Courts (Ireland) Act, 1877.

Meaning of  
"county  
court" in  
future Irish  
Acts.  
40 & 41 Vict.  
c. 56.

30. In this Act and in every other Act, whether passed before or after the commencement of this Act, references to the Sovereign reigning at the time of the passing of the Act or to the Crown shall, unless the contrary intention appears, be construed as references to

References to  
the Crown.

the Sovereign for the time being, and this Act (shall be binding on the Crown (*v. ante*, p. 349). *c*

Construction  
of statutory  
rules, &c.

31. Where any Act, whether passed before or after the commencement of this Act, confers power to make, grant, or issue any instrument, that is to say, any Order in Council, order, warrant, scheme, letters patent, rules, regulations, or byelaws, expressions used in the instrument, if it is made after the commencement of this Act, shall, unless the contrary intention appears, have the same respective meanings as in the Act conferring the power (*v. ante*, p. 258).

Construction  
of provisions  
as to exercise  
of powers and  
duties.

32.—(1.) Where an Act passed after the commencement of this Act confers a power or imposes a duty, then, unless the contrary intention appears, the power may be exercised and the duty shall be performed from time to time as occasion requires (*v. ante*, p. 251).

(2.) Where an Act passed after the commencement of this Act confers a power or imposes a duty on the holder of an office, as such, then, unless the contrary intention appears, the power may be exercised and the duty shall be performed by the holder for the time being of the office (*v. ante*, p. 242).

(3.) Where an Act passed after the commencement of this Act confers a power to make any rules, regulations, or byelaws, the power shall, unless the contrary intention appears, be construed as including a power, exerciseable in the like manner and subject to the like consent and conditions, if any, to rescind, revoke, amend, or vary the rules, regulations, or byelaws (*v. ante*, pp. 257, 258).

Provisions as  
to offences  
under two or  
more laws.

33. Where an Act or omission constitutes an offence under two or more Acts, or both under an Act and at common law, whether any such Act was passed before or after the commencement of this Act, the offender shall, unless the contrary intention appears, be liable to be prosecuted and punished under either or any of those Acts or at common law, but shall not be liable to be punished twice for the same offence (*v. ante*, pp. 208, 284, 306).

Measurement  
of distances.

34.—In the measurement of any distance for the purposes of any Act passed after the commencement of this Act, that distance shall, unless the contrary intention appears, be measured in a straight line on a horizontal plane (*v. ante*, p. 151).

Citation of  
Acts.

35.—(1.) In any Act, instrument, or document, an Act may be cited by reference to the short title, if any, of the Act, either with or without a reference to the chapter, or by reference to the regnal year in which the Act was passed, and where there are more statutes or sessions than one in the same regnal year, by reference to the statute or the session, as the case may require, and where there are more chapters than one, by reference to the chapter, and any enactment may be cited by reference to the section or subsection of the Act in which the enactment is contained (*v. ante*, p. 45).

(2.) Where any Act passed after the commencement of this Act contains such reference as aforesaid, the reference shall, unless a contrary intention appears, be read as referring, in the case of statutes included in any revised edition of the statutes purporting to be printed by authority, to that edition, and in the case of statutes not so included, and passed before the reign of King George the First, to the edition prepared under the direction of the Record Commission; and in other cases to the copies of the statutes purporting to be printed by the Queen's Printer or under the

superintendence or authority of Her Majesty's Stationery Office (v. *ante*, p. 45).

(3.) In any Act passed after the commencement of this Act a description or citation of a portion of another Act shall, unless the contrary intention appears, be construed as including the word, section, or other part mentioned or referred to as forming the beginning and as forming the end of the portion comprised in the description or citation (v. *ante*, p. 290).

36.—(1.) In this Act, and in every Act passed either before or after the commencement of this Act, the expression “commencement,” when used with reference to an Act, shall mean the time at which the Act comes into operation (v. *ante*, p. 150).

(2.) Where an Act passed after the commencement of this Act, or any Order in Council, order, warrant, scheme, letters patent, rules, regulations, or bye-laws made, granted, or issued, under a power conferred by any such Act, is expressed to come into operation on a particular day, the same shall be construed as coming into operation immediately on the expiration of the previous day (v. *ante*, p. 317).

37. Where an Act passed after the commencement of this Act is not to come into operation immediately on the passing thereof, and confers power to make any appointment, to make, grant, or issue any instrument, that is to say, any Order in Council, order, warrant, scheme, letters patent, rules, regulations, or bye-laws, to give notices, to prescribe forms, or to do any other thing for the purposes of the Act, that power may, unless the contrary intention appears, be exercised at any time after the passing of the Act, so far as may be necessary or expedient for the purpose of bringing the Act into operation at the date of the commencement thereof, subject to this restriction, that any instrument made under the power shall not, unless the contrary intention appears in the Act, or the contrary is necessary for bringing the Act into operation, come into operation until the Act comes into operation (v. *ante*, pp. 257, 319).

Exercise of statutory powers between passing and commencement of Act.

38.—(1.) Where this Act or any Act passed after the commencement of this Act repeals and re-enacts, with or without modification, any provisions of a former Act, references in any other Act to the provisions so repealed shall, unless the contrary intention appears, be construed as references to the provisions so re-enacted (v. *ante*, pp. 126, 298).

Effect of repeal in future Acts.

(2.) Where this Act or any Act passed after the commencement of this Act repeals any other enactment, then, unless the contrary intention appears, the repeal shall not—

- (a) revive anything not in force or existing at the time at which the repeal takes effect; or
- (b) affect the previous operation of any enactment so repealed or anything duly done or suffered under any enactment so repealed; or
- (c) affect any right, privilege, obligation, or liability acquired, accrued, or incurred under any enactment so repealed; or
- (d) affect any penalty, forfeiture, or punishment incurred in respect of any offence committed against any enactment so repealed; or
- (e) affect any investigation, legal proceeding, or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture, or punishment as aforesaid;

and any such investigation, legal proceeding, or remedy may be instituted, continued, or enforced, and any such penalty, forfeiture, or punishment may be imposed, as if the repealing Act had not been passed (v. *ante*, p. 290).

*Supplemental.*

- Definition of "Act" in this Act.~ Saving for past Acts. 39. In this Act the expression "Act" shall include a local and personal Act and a private Act (v. *ante*, pp. 148, 306).
- Repeal. 40. The provisions of this Act respecting the construction of Acts passed after the commencement of this Act shall not affect the construction of any Act passed before the commencement of this Act, although it is continued or amended by an Act passed after such commencement (v. *ante*, p. 148).
- Commencement of Act. 41. The Acts described in the Schedule to this Act are hereby repealed to the extent appearing in the third column of the Schedule.
- Short title. 42. This Act shall come into operation on the first day of January one thousand eight hundred and ninety (v. s. 36, *supra*).
43. This Act may be cited as the Interpretation Act, 1889.

SCHEDULE.

Section 41.

ENACTMENTS REPEALED.

Session and Chapter.	Title or Short Title.	Extent of Repeal.
7 & 8 Geo. 4, c. 28.	An Act for further improving the administration of justice in criminal cases in England.	Section fourteen.
9 Geo. 4, c. 54.	An Act for improving the administration of justice in criminal cases in Ireland.	Section thirty-five.
7 Will. 4 and 1 Vict. c. 39.	An Act to interpret the word "sheriff," "sheriff clerk," "shire," "sheriffdom," and "county," occurring in Acts of Parliament relating to Scotland.	The whole Act.
13 & 14 Vict. c. 21.	An Act for shortening the language used in Acts of Parliament.	The whole Act.
29 & 30 Vict. c. 113.	The Poor Law Amendment Act of 1866.	Section eighteen, from the beginning to "can be appointed, and."
42 & 43 Vict. c. 49.	The Summary Jurisdiction Act, 1879.	In section twenty the subsections numbered (3) and (6). Section fifty.
47 & 48 Vict. c. 43.	The Summary Jurisdiction Act, 1884.	Section seven.
51 & 52 Vict. c. 43.	The County Courts Act, 1888.	Section one hundred and eighty-seven, from the beginning to "is meant, and."

## INTERPRETATION ACTS IN FORCE IN BRITISH POSSESSIONS.

BRITISH POSSESSIONS.	ACT OR ORDINANCE IN FORCE.	WHERE TO BE FOUND.
<b>A. Mediterranean.</b>		
CYPRUS .....	Interpretation Laws of 1901 (No. 10) and 1903 (No. 4).	Note, the Statute Law of Cyprus is under revision under Ordinance No. IX. of 1905.
GIBRALTAR .....	Interpretation Order in Council, 1888 (3 May).	Gibraltar Laws, 1832 to 1890, p. 453.
<b>B. Africa.</b>		
(i) WEST COAST.		
1. Gold Coast .....	Ordinances No. 6 of 1875, and No. 3 of 1876.	Ordinances of Gold Coast (ed. 1903), pp. 3, 5.
2. Lagos .....	Ordinance No. 3 of 1876 ....	Laws of Lagos (ed. 1901), p. 11.
3. Northern Nigeria .....	Authentication and Interpretation Proclamation of 1900 (No. 1).	Laws of Northern Nigeria (ed. Gollan, 1905), p. 42.
4. Sierra Leone .....	Ordinance No. 7 of 1864 ....	Sierra Leone Ordinances, vol. 3, p. 54.
5. Southern Nigeria .....	Authentication and Interpretation Proclamation of 1900 (No. 4).	Proclamations, &c. of Southern Nigeria (ed. 1902), p. 5.
(ii) SOUTH.		
1. Cape Colony .....	Interpretation Act, 1883 (No. 5).	Cape of Good Hope Statutes, 1652 to 1895, vol. ii. p. 2019.
2. Orange River .....	None.	
3. Natal .....	Ordinances No. 2 of 1854, and No. 3 of 1887.	Statutes of Natal (ed. 1902), vol. iii. tit. Statutes.
4. Transvaal.....	Interpretation of Laws Proclamation of 1902 (No. 15).	Transvaal Proclamations Revised (ed. 1904), p. 278.
<b>C. Asia and Indian Ocean.</b>		
1. BRITISH INDIA.		
(a) <i>General</i> .....	General Clauses Act, 1897 (No. x.).	Indian Acts, 1897.
(b) <i>Provinces.</i>		
Bengal .....	General Clauses Act, 1899 (No. 1).	Bengal Code (ed. 1905), vol. i. p. 3.
Bombay .....	General Clauses Acts, 1886 (No. 3), 1891 (No. 1), and 1895 (No. 16).	Bombay Code (ed. 1896), vol. iii. p. 91.
Burma .....	General Clauses Act, 1898 (No. 1).	Burma Code (ed. 1899), p. 456.
Madras .....	General Clauses Act, 1891 (No. 1).	Madras Code (ed. 1902), vol. ii. p. 914.
North West Provinces and Oudh .....	General Clauses Act, 1887 (No. 1).	N. W. P. Code (ed. 1892), p. 724.

BRITISH POSSESSIONS.	ACT OR ORDINANCE IN FORCE.	WHERE TO BE FOUND.
<b>C. Asia and Indian Ocean.</b>		
2. CEYLON .....	Interpretation Ordinance, 1901 (No. 21).	Legislative Enactments of Ceylon, vol. iv. p. 103.
3. HONG KONG .....	Interpretation Ordinance, 1897 (No. 8).	Ordinances of Hong Kong (ed. 1902), vol. ii. p. 337.
4. MAURITIUS .....	Interpretation and Common Form Ordinance, 1898 (No. 8), Consolidated Ordinance No. 1, amended by Ordinances No. 9 of 1898 and No. 45 of 1903-4.	Consolidated Laws of Mauritius (ed. 1905), vol. i. p. 2.
5. STRAITS SETTLEMENTS .....	General Clauses Ordinance, 1888 (No. 1).	Ordinances of S. S. (ed. 1898), vol. ii. p. 1008.
<b>D. North America.</b>		
BERMUDA .....	Interpretation Act, 1897 (No. 13).	Bermuda Acts, 1897, p. 47.
CANADA.		
<i>Dominion</i> .....	Interpretation Act, Rev. Stat. Canada 1886, ch. 1.	1 Rev. Stat. Canada, 1886, p. 1; and see Revision Act, <i>ib.</i> p. ix.
<i>Provinces.</i>		
British Columbia.....	Interpretation Act .....	Rev. Stat. Brit. Col. (1897), c. 1.
Manitoba .....	Interpretation Act .....	Rev. Stat. Manitoba (1891), c. 78; and see 55 Vict. c. 41, <i>ib.</i> p. lxxv.
New Brunswick .....	Of the construction, repeal and promulgation of statutes.	Rev. Stat. (1854), vol. i. p. 461.
North-West Territories ....	Interpretation Ordinance....	Consolidated Ordinances of N. W. T. (1898), tit. i. c. 1.
Nova Scotia .....	Interpretation Act .....	Rev. Stat. Nova Scotia (1900), tit. i. c. 1.
Ontario .....	Interpretation Act .....	Rev. Stat. Ontario (1897), c. 1.
Prince Edward's Island ....	14 Vict. c. 5 (1851) .....	Revised Laws of P. E. I. (1862), p. 678.
Quebec .....	On promulgation, authentication and interpretation.	Rev. Stat. Quebec (1888), chap. 1, ss. 1-58.
Newfoundland .....	Consolidated Statutes, 1872, tit. i. c. 1.	See Consolidated Statutes (2nd series), made under Publication of Consolidated Statutes Act, 1889 (c. 24).
<b>E. West Indies and S. America.</b>		
1. BAHAMAS .....	Interpretation Acts, 1895 (58 Vict. c. 29), and 1897 (60 Vict. c. 13).	Laws of Bahamas, 1795 to 1899, p. 92.
2. BARBADOS .....	Act of 1851 (No. 1).	Revised and Consolidated Laws of Barbados (ed. 1893), vol. i. p. 21.
3. BRITISH GUIANA .....	Interpretation Ordinance, 1891 (No. 14).	Laws of British Guiana (ed. 1905), vol. iii. p. 737.
4. BRITISH HONDURAS.....	Shortening Ordinance, 1878 (No. 2).	Consolidated Laws of British Honduras (ed. 1887), Part I. chap. i.
5. FALKLAND ISLANDS .....	Interpretation and General Law Ordinance, No. 3 of 1900.	

BRITISH POSSESSIONS.	ACT OR ORDINANCE IN FORCE.	WHERE TO BE FOUND.
<b>E. West Indies and S. America.</b>		
6. GRENADA .....	Interpretation Ordinance, (No. 5).	Laws of Grenada Revised (ed. 1897), p. 570.
7. JAMAICA .....	Interpretation Law, 1900 (Law 9 of 1900).	Jamaica Laws, 1900.
8. LEEWARD ISLANDS .....	Interpretation of Laws Act, (No. 12).	
Antigua.....	Interpretation of Laws Acts, 1896 (No. 6) and 1897 (No. 12).	
Dominica .....	Act No. 115 of 1852.	Laws of Dominica, 1841— 1859, vol. i. p. 234.
Montserrat .....	Act No. 6 of 1898.	
St. Kitt's and Nevis .....	Act No. 18 of 1896.	
Virgin Islands .....	Act No. 1 of 1899.	
9. ST. LUCIA.....	Ordinances Construction Ordinance, 1887.	Laws of St. Lucia (ed. 1889), p. 328.
10. ST. VINCENT .....	Ordinance No. 1 of 1896.	
11. TRINIDAD and TOBAGO.	None.	
<b>F. Australasia.</b>		
1. AUSTRALIA.		
Commonwealth .....	Acts in Interpretation Act, 1901 (No. 2).	Commonwealth Stats. (1901), p. 30.
States.		
New South Wales .....	Interpretation Act, 1897 (61 Vict. No. 4).	N. S. W. Stats. 1897.
Queensland .....	Acts Shortening Acts of 1867 (31 Vict. No. 6) and 1903 (3 Edw. 7, No. 10).	
South Australia .....	Language of Acts Act, 1872 (No. 9), Language of Laws Amendment Act, 1900 (63 & 64 Vict. No. 741).	
Tasmania .....	Interpretation Act, 1900 (64 Vict. No. 8).	Stats. of Tasmania (ed. 1903), vol. ii. p. 1114.
Victoria .....	Acts Interpretation Act, 1890 (54 Vict. No. 1058).	Stats. of Victoria (1890), vol. i. p. 1.
Western Australia .....	Interpretation Act, 1898 (62 Vict. No. 30).	Stats. W. A. vol. iv. p. 409.
2. FIJI .....	Interpretation Ordinance, 1875 (No. 7).	
3. NEW ZEALAND.....	Interpretation Act, 1888 (52 Vict. No. 15).	N.Z. Stats. (1888), p. 60.





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